

***FIRST AMENDMENT***  
***TO THE***  
***DRAFT***  
***ENVIRONMENTAL IMPACT REPORT***

**MODIFICATIONS TO THE  
CITY OF SAN JOSÉ'S  
TRANSPORTATION IMPACT  
POLICY  
(PP02-07-178)**

**SCH #2002082001**

**Prepared by the  
City of San José**

**May 2005**

## PREFACE

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This document, together with the Draft Environmental Impact Report (DEIR) for the City of San José's Transportation Impact Policy Project, constitutes the Final Environmental Impact Report (Final EIR) for the proposed project. The Final EIR is an informational document prepared by the Lead Agency that must be considered by the decision-makers before approving the proposed project (CEQA Guidelines Section 15090). The California Environmental Quality Act (CEQA) Guidelines (Section 15132) specify that a Final EIR shall consist of the following:

- The Draft EIR or a revision of the draft.
- Comments and recommendations received on the Draft EIR either verbatim or in a summary.
- A list of persons, organizations, and public agencies commenting on the Draft EIR.
- The responses of the Lead Agency to the significant environmental points raised in the review and consultation process.
- Any other information added by the Lead Agency.

In conformance with the CEQA Guidelines, the Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines require that, while the information in the Final EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the Draft EIR by making written findings for each of those significant effects before it approves a project.

According to the CEQA Guidelines (Section 15091), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant environmental effects of the project, unless the public agency makes one or more written findings for each of those significant effects. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless *both* of the following occur:

- a) The public agency makes one or more of the following findings with respect to each significant effect:
  - 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
  - 2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been required or can and should be adopted by that other agency.
  - 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

- b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received from persons who reviewed the Draft EIR. The Final EIR will be made available to the public ten (10) days prior to the EIR certification hearing.

All documents referenced in this EIR are available for public review at the office of the Planning Division in the Department of Planning, Building, and Code Enforcement, 801 North First Street, Room 400, San Jose, California 95110, on weekdays during normal business hours.

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## **I. LIST OF AGENCIES AND INDIVIDUALS RECEIVING THE DRAFT EIR**

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### ***Federal and State Agencies***

Northwest Information Center, Sonoma State University  
Office of Historic Preservation  
State Clearinghouse  
State of California Air Resources Board  
State of California Department of Fish and Game  
State of California Department of Parks and Recreation  
State of California Department of Transportation, District 4  
State of California Department of Transportation, Headquarters  
State of California Department of Transportation, Division of Aeronautics  
State of California Department of Water Resources  
State of California Highway Patrol  
State of California Resources Agency

### ***State Independent Commissions***

Native American Heritage Commission  
Public Utilities Commission  
State Lands Commission

### ***Regional and Local Agencies***

Bay Area Air Quality Management District  
City of Milpitas  
City of San José Public Library, Main Library  
County of Santa Clara, Airport Land Use Commission  
County of Santa Clara, Planning Department  
County of Santa Clara, Roads and Airports Department  
Regional Water Quality Control Board, Region #2  
Martin Luther King Jr. San José State Main Library  
Santa Clara Valley Transportation Authority

### ***Organizations and Individuals***

Delmas Park NAC  
Vendome Neighborhood Association  
VEP Community Association  
Willow Glen Neighborhood Association  
Patti Bossert  
Nina and Marc Boyd  
Susan Clair  
Christine Clifford  
Janet Darrow  
Ken Eklund  
David Fadness  
Lowell Grattan  
Matt Hall  
Jody Hucko and Scott MacDonald  
Dave Landis  
Marguerite Lee  
Kathryn Mathewson  
David Noel  
Yolanda Reynolds  
Kirk Vartan  
Brian Ward

## II. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

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Presented below is a list of agencies, organizations, and individuals commenting on the Draft EIR. The table below also identifies the date of the letter received, and whether the comments submitted require substantive responses.

Comment Received From	Date of Letter	Response Required
<b><i>Federal and State Agencies</i></b>		
A. State of California, Department of Transportation, District 4	10/13/04	Yes
<b><i>Regional and Local Agencies</i></b>		
B. County of Santa Clara, Roads and Airports Department	10/13/04	Yes
C. Santa Clara Valley Transportation Authority	10/8/04	Yes
<b><i>Organizations and Individuals</i></b>		
D. Delmas Park NAC	12/5/04	Yes
E. Vendome Neighborhood Association	10/14/04	Yes
F. VEP Community Association	12/6/04	Yes
G. Willow Glen Neighborhood Association	12/6/04	Yes
H. Patti Bossert	12/6/04	Yes
I. Nina and Marc Boyd	12/6/04	Yes
J. Susan Clair	12/3/04	Yes
K. Christine Clifford	12/1/04	Yes
L. Janet Darrow	12/6/04	Yes
M. Ken Eklund	12/6/04	Yes
N. David Fadness	10/13/04, 12/5/04	Yes
O. Lowell Grattan	10/14/04, 12/6/04	Yes
P. Matt Hall	12/6/04	Yes
Q. Jody Hucko and Scott MacDonald	12/6/04	Yes
R. Dave Landis	12/6/04	Yes
S. Marguerite Lee	12/6/04	Yes
T. Kathryn Mathewson	12/6/04	Yes
U. David Noel	12/6/04	Yes
V. Yolanda Reynolds	10/14/04, 12/6/04	Yes
W. Mike Schadeck	2/10/2005	Yes
X. Kirk Vartan	12/6/04	Yes
Y. Brian Ward	11/22/04	Yes

### III. RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

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In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received from persons who reviewed the Draft EIR. This section includes all of the comments contained in the letters received during the 45-day review period advertised for the Draft EIR, comments received during the extended review period, and responses to those comments. The comments are organized under headings containing the source of the letter and its date. The letters have been grouped into the following categories.

- Federal and State Agencies
- Regional and Local Agencies
- Organizations and Individuals

The specific comments have been copied from the letters and presented as “Comment” with its response directly following. Copies of the actual letters and emails received, and any attachments to those letters or emails, are found in their entirety in Section V of this First Amendment to the Draft EIR.

The CEQA Guidelines, in Section 15086, require that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this First Amendment to the Draft EIR lists all of the recipients of the EIR.

Comment letters were received from three public agencies, which may be Responsible Agencies for the proposed project. The CEQA Guidelines require that:

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state:

Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate readily available guidelines or reference documents concerning mitigation measures. If the responsible agency or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]



## ***FEDERAL AND STATE AGENCIES***

### **A. RESPONSES TO COMMENTS FROM THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, DATED OCTOBER 13, 2004**

#### **Comment A-1:**

Project impacts on state facilities have not been addressed in this report. Please provide analysis for the following intersections and ramps:

- A. I-880/SR-82
- B. I-680/Berryessa Road
- C. I-680/Hostetter Road
- D. I-680/McKee Road
- E. SR-87/Taylor Avenue

#### **Response A-1:**

As stated on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated "Transportation Impact Policy" which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City's transportation system, particularly the adopted General Plan Traffic LOS Policy. The proposed Transportation Impact Policy change does not include any construction or physical development not already proposed or allowed by the City's adopted General Plan, and therefore, would not generate new traffic.

The Traffic Impact Analysis (TIA) in the EIR analyzes the proposed policy change and the intersections affected by the policy change. The potential for traffic overflow to impact other intersections was also evaluated. The discussion on page 75 of the Draft EIR states that increased congestion at the proposed 13 Protected intersections could result in some drivers in the future using routes different than routes involving one or another of the 13 intersections. The precise route or routes that might be used instead cannot be determined in the absence of a specific project and/or a more precise time frame. As for other intersections, there may be incremental increases in traffic on freeway segments or ramp intersections than would otherwise occur, but those increases are impossible to predict in the absence of specific development proposals. To try to analyze the ramp intersections identified in this comment would require a high degree of speculation, which would not be meaningful.

Future development projects will be evaluated for potential impacts upon freeways and ramps, consistent with requirements of CEQA and the City of San José and Congestion Management Program (CMP) guidelines and policies.

#### **Comment A-2:**

Provide segment analysis for the following routes:

- A. I-880
- B. I-680
- C. SR-87
- D. US-101

- E. SR-85
- F. SR-82

**Response A-2:**

Please refer to the response to comment #A-1 above.

**Comment A-3:**

Future projects introduced under this policy should include an analysis of project impacts on all of the facilities above. Fair share contributions should be collected for any improvements required as mitigation for traffic impacts of the proposed project.

**Response A-3:**

Future development projects will be evaluated for potential impacts upon freeways and ramps, consistent with the requirements of CEQA and with the City of San José and Congestion Management Program (CMP) guidelines and policies. “Fair share” contributions for improvements cannot be considered mitigation under CEQA unless a mechanism exists to ensure that monies are used to physically mitigate project impacts in a timely manner.

**Comment A-4:**

Why was the Highway Capacity Manual (HCM) 2000 operational methodology used for the PM peak hour for the following intersections and not the 1985 HCM operational methodology as was used for other intersections?

- A. Bird Avenue/San Carlos Street
- B. Stevens Creek Boulevard/Winchester Boulevard

**Response A-4:**

The two intersections were reanalyzed using the 1985 HCM methodology. The results of these calculations are provided in Section IV. *Revisions to the Text of the EIR*. Analysis of these intersections according to the 1985 HCM methodology does not change the LOS results at these intersections or the impact conclusions in the EIR.

**Comment A-5:**

There is inconsistency in Appendix C. It should be checked and corrected. For example, the Existing PM peak calculation sheet for the above intersections in Appendix C is missing. Please correct and provide this for our evaluation.

**Response A-5:**

The missing calculation sheet has been added to Appendix C in Section IV. *Revisions to the Text of the EIR* of this report.

**Comment A-6:**

Page 73, “The future traffic volumes under project conditions were determined based on the grow rates projected by the ABAG as well as...” Two places in Appendix C identified “AMBAG” as the base. Please clarify.

**Response A-6:**

The future traffic volumes used are consistent with Association of Bay Area Governments (ABAG) projections and the City’s General Plan, and are the same as those used in the CMP/VTA model. The ABAG projections are coordinated with VTA, and the volumes are incorporated as part of the CMP/VTA model for travel activity related to ABAG region. The Association of Monterey Bay Area Governments (AMBAG) data is also used in the VTA model to determine the traffic volumes from the Monterey Bay Area. The text of the EIR has been revised to clarify this in Section IV. *Revisions to the Text of the EIR* of this report.

**Comment A-7:**

Page 78, “The percent growth in traffic trips... was determined based upon... San José’s General Plan and likely travel pattern...” Appendix C reads: “...the project traffic was determined by growth rates based on future growth projected by AMBAG and used in the CMO/VTA model. Please clarify.

**Response A-7:**

Please refer to the response to comment A-6 above.

**Comment A-8:**

How were traffic growth rates applied? Were they applied on the existing traffic conditions to obtain future year traffic for project conditions?

**Response A-8:**

The traffic growth rates in the TIA prepared for the EIR were applied to background conditions, which is consistent with the City of San José methodology for preparing traffic impact analyses.

**Comment A-9:**

Page 32, the DEIR should reference the current VTA CMP (2003) and adopted (2001) MTC RTP.

**Response A-9:**

This comment is noted. The text of the EIR has been revised to reference these documents (please refer to Section IV. *Revisions to the Text of the EIR* of this report).

## **REGIONAL AND LOCAL AGENCIES**

### **B. RESPONSES TO COMMENTS FROM THE COUNTY OF SANTA CLARA, ROADS AND AIRPORTS DEPARTMENT, DATED OCTOBER 13, 2004**

#### **Comment B-1:**

Our September 15, 2003 letter included our comments on the Notice of Preparation (NOP) of the subject project. A review of the proposed Transportation Impact Policy under Appendix B, pages 1 thru 6, indicates that the concern listed in our September 15, 2003 letter is not addressed.

#### **Response B-1:**

The September 15, 2003 letter referred to in the comment (which was included in Appendix A of the Draft EIR) stated the following:

“1. It is recognized that the 13 traffic intersections, listed under Item B or the NOP, which is the subject of the proposed Transportation Impact Policy, are within the jurisdiction of the City of San José. However, as a matter of policy, we are offering the following comments/concerns:

The traffic analysis should state specifically what the ‘unacceptable impacts’ are for each listed intersection. Evaluation of impacts should not operate under the premise that rights-of-way (ROW) can not be obtained, although at some locations, ROW take maybe deemed as an ‘unacceptable impact’. In that case, the determination should be specific as to what makes ROW take unacceptable. ‘Reducing the width of a sidewalk’, for example, could be mitigated by relocating the sidewalk.”

Unacceptable impacts are defined on page 24 of the Draft EIR. As described on page 24 of the Draft EIR:

*“If any of the LOS Traffic Improvements that are necessary to avoid significant traffic impacts could, themselves, have unacceptable impacts on other existing or planned transportation facilities, those improvements would not be allowed. An unacceptable impact on other existing or planned transportation facilities is defined as reducing any physical dimension of a transportation facility below the City’s stated minimum design standard, or causing a substantial deterioration in the quality of any other planned or existing transportation facilities, including pedestrian, bicycle, and transit systems and facilities. Examples of unacceptable impacts would include:*

- *reducing the width of a sidewalk below minimum city standard;*
- *eliminating a bicycle lane or reducing its width below minimum city standard;*
- *eliminating a bus stop, or eliminating a parking lane that accommodates a bus stop;*
- *eliminating a park strip (between sidewalk and street) that contains mature trees that shade and protect the sidewalk;*
- *encouraging substantial neighborhood cut-through traffic.*

*Certain local intersections that are fully improved and built out will be identified as exempted from any further vehicular capacity-enhancing, LOS Traffic Improvements in the future. To continue to expand local intersections to increase their vehicular capacity may, under certain circumstances (i.e., at the locations of the 13 intersections proposed to be included on the list of Protected intersections), result in a deterioration of the local environment and an erosion of the City's ability to encourage Smart Growth infill and support a variety of multi-modal transportation systems, which are important City goals identified in the General Plan."*

As also described on page 24 of the Draft EIR, capacity-enhancing expansion of the 13 intersections is constrained because of the presence of substantial transit improvements, adjacent private development, or a combination of both circumstances.

The specific criteria for selection of the Protected intersections is described on page 28 of the Draft EIR. As stated on page 28:

*Any intersections projected to deteriorate below LOS D under these future conditions were evaluated against the following criteria to determine their eligibility as a Protected intersection:*

- *whether there are additional traffic improvements that could physically be built at the intersections without adversely affecting other transportation modes beyond minimum standards;*
- *whether there are multiple transportation modes present at the intersections;*
- *whether the intersections are located in areas that promote infill development and "smart growth"; and*
- *whether the intersections will be affected by future LRT corridors.*

*Intersections meeting the above criteria are considered eligible as "Protected" intersections. The list of Protected intersections evaluated in this EIR includes intersections for which there are no additional traffic improvements that could physically be built at the intersections without adversely affecting other transportation modes beyond minimum standards. The 13 Protected intersections (listed below) are intersections that the City believes, based on the analysis summarized in Section II.B. Transportation and Appendix C of this EIR, are built to their maximum capacity, where further expansion would cause significant adverse effects upon existing or approved transit or multimodal facilities, nearby land uses, or local neighborhoods.*

In addition, the specific physical conditions at each of the 13 Protected intersections, which make them eligible for the list of Protected intersections, are described in Section II.A. *Land Use* (pages 47-51) of the Draft EIR. The precise impacts that are considered unacceptable cannot be determined in the absence of a specific project and/or a more precise time frame.

### **Comment B-2:**

It should be clarified in the Draft EIR that if a proposed project impacts a County maintained traffic intersection, the subject Policy shall not preclude City requiring the proposed project for the mitigating improvements to the impacted intersection within the County's jurisdiction.

### **Response B-2:**

Future development projects which would result in traffic impacts to intersections under the County's jurisdiction, would still be required to mitigate those impacts, in accordance with the County and CMA requirements. The text of the EIR has been revised to clarify this and is provided in Section IV. *Revisions to the Text of the EIR* of this report.

## **C. RESPONSES TO COMMENTS FROM THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, DATED OCTOBER 8, 2004**

### **Comment C-1:**

#### **Application of Policy**

The DEIR states that the proposed Transportation Impact Policy would apply citywide, except (1) within the Downtown Core Area, and (2) within areas where localized adopted "Area Development Policies" are in effect. What does this mean for a proposed land development project in one of these special development policy areas that is determined to cause the LOS at one of the "protected" intersections to degrade to LOS E or LOS F? Should there be a clarification that helps to differentiate what the policy means for proposed land development projects? It seems that the above exception for areas with development policies pertains to the process for identifying which intersections were considered for the "protected" intersection designation. Wouldn't a proposed land development project in an area with development policies shown to degrade a "protected" intersection to LOS E or LOS F still have to follow the policies for "protected" intersections?

### **Response C-1:**

In the event that a future land development project, located within one of the special development policy areas, would result in traffic impacts to a "Protected" intersection, that project would be required to comply with the proposed Transportation Impact Policy. As described on page 27 of the Draft EIR, "if a TIA prepared, as described above, identifies what is currently considered a significant LOS impact to one of these intersections, the project would not be required to provide further vehicular capacity-enhancing improvements to that intersection in order to find conformance with the General Plan. The impact would remain identified as a significant impact for the purposes of CEQA. Instead, the project proponent would provide improvements to other parts of the citywide transportation system in order to improve system-wide roadway capacity or to enhance non-auto travel modes in furtherance of the General Plan goals and policies herein identified. The improvements would be within the project site vicinity, or within the area affected by the project's traffic impacts. With the provision of such improvements, the project would not have to provide any vehicular mitigation for impacts to the listed intersection in order to conform to the General Plan."

## **Comment C-2:**

### **Impacts to Adjacent Intersections**

Was the effect of the proposed Transportation Impact Policy on intersections adjacent to those designated as “protected” intersections evaluated (e.g., were evaluations conducted to determine if future queuing and congestion from the “protected” intersections would affect adjacent intersections?)? Please explain.

## **Response C-2:**

The TIA prepared for the EIR evaluated the effects of the proposed Transportation Impact Policy on other intersections, particularly those near the designated “Protected” intersections. A discussion of the potential for travelers to seek alternative routes and increase congestion at other intersections is provided on page 75 of the Draft EIR. As stated on page 75,

*“With the proposed policy modification, traffic congestion at other intersections throughout the City would also incrementally increase. However, the project would not cause the LOS to drop below acceptable levels at any of the other intersections during the AM or PM peak hour, unless those intersections become Protected intersections by approval of the City Council, which is too speculative to identify at this point.”*

The TIA calculations for other intersections throughout the City are available for review at the City of San José, Department of Planning, Building and Code Enforcement, located at 801 N. First Street, Room 400, during normal business hours.

## **Comment C-3:**

### **Use of EIR as Base for Specific Development Proposals**

Page 27 of the DEIR states that “the project-specific environmental review may use this EIR as a base and “tier” off it...” Page 29 of the DEIR states that “the City of San José will use this EIR to tier subsequent environmental review for specific development proposals within the City that affect the 13 intersections addressed in this EIR...” Which analysis scenario (existing, background, and/or project) results in this EIR will be used for subsequent specific development proposals, if any? The analysis in this EIR is based on the older Santa Clara County traffic LOS analysis standards prior to the June 2003 update of VTA’s Traffic LOS Analysis Guidelines. If analysis results from this EIR are to be used for the 13 intersections in subsequent specific development proposals, how will these analysis results based on the older analysis standards be reconciled with the June 2003 analysis standards that would be used in the subsequent transportation analyses?

## **Response C-3:**

It is the intent of the City of San José that project-specific environmental review may tier off of this EIR. Future projects which result in traffic impacts to one or more of the protected intersections would not be required to prepare a new EIR specifically to address the traffic impacts to Protected intersections. The project-specific environmental document (whether an Initial Study or Subsequent/Supplemental EIR) will include analysis of all other impacts, including other traffic impacts, as required by CEQA. If the project also has a significant impact at another (non-Protected) intersection, the impact and its mitigation will be addressed as they have been in the past under existing policies. In other words, if a future development

project would result in a significant impact at other intersections, an EIR would be required to address that impact. As described on pages 27-28 of the Draft EIR:

*A development project that conforms to this Policy, which results in impacts at one or more of the listed intersections that fall within the parameters evaluated in this EIR, will not be required to prepare an EIR to address its impacts at one of the listed intersections. The project-specific environmental review may use this EIR as a base and “tier” off it, as allowed by CEQA and the City’s Environmental Review Ordinance. This EIR will, however, only be used for the purpose of addressing the impacts of traffic at one or more Protected intersections. The project-specific environmental document, whether an Initial Study or Subsequent/Supplemental EIR, will include analysis of all other impacts, including other traffic impacts, as required by CEQA. If the project also has a significant impact at another (non-protected) intersection, the impact and its mitigation will be addressed as they have been in the past under existing policies. If the impact is fully mitigated in a fashion that is consistent with the adopted Council Transportation Impact Policy, it will not trigger preparation of an EIR.*

The City conducted a comparative analysis of the upper delay threshold of each LOS grade relative to LOS E/F, and the City concluded that old and new delay scales are comparable. For example, the upper delay thresholds for LOS A are 5.0 seconds relative to 60.0 seconds for LOS E/F under the old methodology and 10.0 seconds relative to 80.0 seconds under the new methodology. It appears the Transportation Research Board (publisher of the *Highway Capacity Manual*) attempts to preserve the LOS delay scale relative to LOS E/F thresholds; the slight difference is a result of rounding to nearest 5.0 seconds.

The new methodology will be used for future analysis of project impacts. For informational purposes, conditions at Protected intersections will, in the future, be communicated in terms of the new delay scale.

#### **Comment C-4:**

##### **Criteria for Qualifying Improvements**

Page 25 of the DEIR lists three criteria for qualifying improvements constructed directly by a developer. The first and third criteria reference multi-modal, non-vehicular types of improvements. However, the second criterion mentions, “improvements which serve the neighborhood of the development project, or the proximate community impacted by the project traffic.” Does this criterion include the construction of roadway improvements that benefit vehicular traffic? Please provide detail on the types of improvements covered by this criterion.

#### **Response C-4:**

The second criterion listed on page 25 of the Draft EIR refers to multi-modal physical improvements, including transit facilities, pedestrian facilities, bicycle facilities (including, but not limited to trails, pathways and bike lanes), which serve the neighborhood of the development project or the proximate community impacted by the project traffic. The improvements may also include traffic calming features intended to slow vehicle speeds, limit cut-through traffic, protect pedestrians, etc. The improvements mentioned in this criterion are not intended to include automobile-capacity-enhancing improvements. (However, it should be noted that the a project has an impact at a protected intersection, it



could be possible that if a future development project has an impact at a Protected intersection, that project could mitigate that impact by providing capacity somewhere else and shifting traffic.) The text of the EIR has been revised to clarify this language (refer to Section IV. *Revisions to the Text of the EIR*).

**D. RESPONSES TO COMMENTS FROM THE DELMAS PARK NEIGHBORHOOD ADVISORY COUNCIL, DATED DECEMBER 5, 2004**

**Comment D-1:**

The Delmas Park NAC would like to request the removal of the Bird Avenue and W. San Carlos Street Intersection from the new policy.

Our NAC plan and support for high-density development was approved based upon existing LOS/Transportation Policies. Any change to the LOS/Transportation policy for this crucial intersection in our small NAC will result in the re-evaluation of our support for development in the area.

**Response D-1:**

The comment is noted. The City Council will evaluate this information prior to deciding whether to approve the project as it is currently proposed. As described on page 27 of the Draft EIR, the Council may choose to approve the list of Protected intersections as proposed or to modify it.

No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment D-2:**

In addition to development within the boundaries of our NAC, Delmas Park has been an active participant in community meetings evaluating development on the Del Monte site, the San José Water Company site, and the Diridon Strategic Plan. Our support of these projects has always been with the belief that we would be able to evaluate traffic within our entire NAC. Exempting the intersection of Bird and W. San Carlos from LOS impact studies was never presented when we gave our support for these proposed developments and plans.

**Response D-2:**

All of the traffic analyses done for the projects listed included analysis of impacts at the Bird Avenue/San Carlos Street intersection, consistent with the existing LOS Policy. The proposed modifications to the Transportation Impact (LOS) Policy [TIP] are not proposed to be retroactive, and would not absolve previously approved projects from implementing mitigation measures which were required as conditions of approval.

**Comment D-3:**

Our NAC and the area immediately surrounding us contains large under developed and undeveloped blocks of land. Until developers submit final documents and construction actually begins, there is no guarantee that land ultimately will be used as presently zoned. We cannot support a policy that exempts the intersection of Bird and W. San Carlos from proper and reasonable evaluation. We firmly believe that traffic at this intersection needs to be re-evaluated with each new development.

**Response D-3:**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment D-4:**

We believe that a bicycle and pedestrian friendly neighborhood can be developed based on existing LOS/Transportation Policies. The Delmas Park NAC respectfully requests the intersection of Bird and W. San Carlos be removed from PP02-07-178.

**Response D-4:**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**E. RESPONSES TO COMMENTS FROM THE VENDOME NEIGHBORHOOD ASSOCIATION, DATED OCTOBER 14, 2004**

**Comment E-1:**

The Vendome Neighborhood Association is located in the vicinity of several “protected intersections” proposed to be exempted from the City’s level of service policy. We conditionally support the City’s Proposed Transportation Impact Policy to require all development projects which impact one or more “protected intersections” to pay a Transportation System Offset Fee to fund other improvements to the transportation system. However, we are concerned that language in the Proposed Transportation Impact Policy (page 7, Section III C. Protected Intersections) is too broad.

“First priority for such improvements will be those improvements identified that would be proximate to the neighborhoods impacted by the development project traffic.”

Impacts will fall disproportionately upon a limited number of high density development corridors. Impacted geographic areas should not only be given “first priority” for improvements—rather the fees collected should be required to be spent in the impacted geographic areas. We strongly urge that the proposed policy text be amended in the EIR to reflect a clear nexus between the impacted geographic areas and where the citywide transportation system improvements will occur to avoid the inevitable situation in [sic] fees are diverted to fund improvements elsewhere in the City.

**Response E-1**

The comment is noted. The City, whether City Council, Planning Commission, or Director of Planning, depending upon the type of development application, will evaluate all conditions of approval for future specific development projects prior to deciding whether to approve such projects. The City Council will evaluate this comment, prior to acting on the proposed Transportation Impact (LOS) Policy revisions.

No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**F. RESPONSES TO COMMENTS FROM THE VEP COMMUNITY ASSOCIATION,  
DATED DECEMBER 6, 2004**

**Comment F-1:**

VEP members participated in the framing of our original General Plan in 1975. The City of San José wisely implemented the will of its citizens by adopting GP'75 and the current transportation impact policy. That policy, a public trust, has served us well.

In 2004, our planners evidently feel the 1975 traffic impact policy is contrary to the greater good of San José. This reflects a MAJOR paradigm shift in transportation and land use policies, and VEP believes it is contrary to the desires of the vast majority of San José's citizens, who consistently cite transportation problems as their top quality of life concern.

**Response F-1**

The comment is noted. The City Council will evaluate the opinion expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment F-2**

Unfortunately, the EIR review process does not reach out to the citizens in a fashion commensurate with the significance of this change. We feel the proposed transportation and land use policy changes should be addressed together, and presented to the citizens of San José with an outreach effort commensurate with what would be required to advocate transportation tax increase. After all, this IS a tax increase. It is a tax on our quality of life that will likely result in future taxes to address the unmitigated transportation and other impacts it will create.

**Response F-2**

The environmental review process for this proposed policy modification project, including preparation of the Draft EIR, has been completed in accordance with all of the public outreach and noticing requirements of CEQA (Guidelines Sections 15082 through 15087, and 15105) and the City of San José.

Prior to completion and circulation of the Draft EIR, a Notice of Preparation (NOP) was prepared and circulated for a period of 30 days, from August 1, 2002 to August 30, 2002, in accordance with CEQA Guidelines Section 15082. When the project was revised to include 13 Protected intersections, a revised NOP was then circulated for another 30-day period from August 27, 2003 to September 25, 2003. Issues raised in the comments received on the NOP were addressed in the Draft EIR, and the actual comment letters were provided in Appendix A of the Draft EIR. A public EIR scoping meeting was held on August 21, 2002 (refer to Appendix A of the Draft EIR) (in accordance with Guidelines Section 15082). A Notice of Public EIR Scoping Meeting was published in the San Jose Mercury News on Thursday, August 8, 2002.

The public review period for the Draft EIR was originally set at 45 days, (from August 31, 2004 to October 14, 2004) in accordance with CEQA Guidelines Section 15105. Due to the amount of public interest and some technical difficulties with the web version of the Draft EIR, the public review period was extended another 52 days (for a total of 97 days), to December 6, 2004. A Notice of Community Meeting and Extended Public Comment Period for the Draft EIR was published in the San Jose Mercury News on Monday, November 15, 2004. The City continued to accept public comments on the Draft EIR into February of 2005.

In addition, the City of San José has held eight (8) community outreach meetings, including the following:

- General Plan Community Meetings (October 5 and 6, 2004);
- Transportation Impact (LOS) Policy Specific Community Meetings (October 25, 26, 27, 28 and December 2, 2004); and
- District 6 meeting (November 30, 2004).

The purpose of these meetings has been to provide information about the proposed Transportation Impact (LOS) Policy project, and to gather public input into the environmental review process (refer to Section IV. *Revisions to the Text of the EIR*).

The certification of the Final EIR may be appealed in writing to the City Council by any person prior to 5:00 p.m. on **Tuesday, June 7, 2005**. Such appeal must be filed on the appropriate form and accompanied by filing fees at the Department of Planning, Building and Code Enforcement and must include a statement specifying the basis of the appeal.

No further response is required as this comment does not speak to any specific impacts on the physical environment, nor does it raise any questions about the adequacy of the EIR.

### **Comment F-3**

Unless and until the citizens of San José “buy in” to the concepts behind these significant transportation and land use changes, VEP Community Association believes the current transportation impact policy should remain in force.

### **Response F-3**

The opinion in this comment is acknowledged. No further response is required as this comment does not speak to any specific impacts on the physical environment, nor does it raise any questions about the adequacy of the EIR.

### **Comment F-4**

Under the current transportation impact policy, the city council already has all the options it needs. When faced with a project that violates policy, the council can:

- Disapprove the project;
- Reduce the scope of project until it complies with the policy; and/or
- Approve the project, explicitly and publicly acknowledging that it violates the policy but meets the greater good of San Joséans.

#### **Response F-4**

The comment is incorrect. Under the existing Transportation Level of Service (LOS) Policy (Council Policy 5-3), a proposed development project (not within one of the City's special planning areas described on page 2 of the Draft EIR), which does not mitigate its impacts to all impacted intersections, does not conform to the LOS policy, and by definition does not conform to the City's General Plan, and cannot be approved. The first two bullets listed in the comment above are options currently available to the City Council under such a scenario. The third option that is currently available is for a project to mitigate its traffic impact (i.e., increasing traffic capacity by widening the intersection, providing additional travel lanes, etc.), which often results in removal of bicycle or pedestrian facilities. This approach provides vehicular capacity at the expense of pedestrian and bicycle facilities.

Additionally, there is no policy basis for the City to deny mitigation measures that themselves adversely impact other elements of the transportation infrastructure.

#### **Comment F-5**

VEP strongly feels that our policy makers should be held accountable to the voters for approving projects that diminish their quality of life. Land use decisions that result in violation of transportation (or any other) level of service policy should be made explicitly on a case-by-case basis, fully visible to the citizens of San José. We consider it highly disingenuous to "quietly" change the policy instead.

The citizens of San José are innovative problem solvers. We should not be so quick to abandon policies that protect our quality of life. We should view this as a challenge and an opportunity.

In closing, think about how you got to the desk you are sitting at now. Did you drive your car? Imagine how traffic would have been if the 1975 transportation impact policy hadn't been adopted.

It is not necessary or in the best interest of our city to change our level of service policy. Please do not do it.

#### **Response F-5**

The opinion in this comment is acknowledged as being directed to the proposed policy itself, not the EIR's analysis of the policy's environmental impacts. No further response is required as this comment does not speak to any specific impacts on the physical environment, nor does it raise any questions about the adequacy of the EIR.

**G. RESPONSES TO COMMENTS FROM THE WILLOW GLEN NEIGHBORHOOD ASSOCIATION, DATED DECEMBER 6, 2004**

**Comment G-1:**

Project Purpose - The draft Environmental Impact Report's (DEIR)'s stated reason in the Summary section for the proposed LOS modification is " In order to reduce the likelihood that ongoing modifications to the street system could compromise or impair the operational efficacy of alternative transportation modes, the City is proposing to update its Level of Service implementation policy." The city has not clearly stated the city's primary reason for the LOS modification, which has been documented in other city documents and emails, which is that without modifying the existing LOS D policy development for the 13 intersections, as proposed in the general plan, North San Jose plan and other infill plans city development would be reduced by over 26 million square feet.

**Response G-1**

The modifications to the Transportation Impact (LOS) Policy that are evaluated in the Draft EIR reflect the outcome of a two-year process of planning and public outreach. Parallel planning efforts in other parts of the City, including North San José, Downtown, Evergreen, and Coyote Valley, have been pursued for separate but similar purposes: during a time of slow economic growth, the City is re-evaluating the bases of past planning practices, their viability for stimulating economic recovery, the existence of new economic opportunities, and the extent to which transportation-related policies support or impede each other and related Citywide goals.

The proposed modifications to the Transportation Impact (LOS) Policy are relevant to the proposed Vision North San José Project and to the proposed San José Downtown Strategic Plan. All of these ongoing planning efforts represent a consistent and integrated approach to planning for San José.

**Comment G-2:**

The City Council in December 2003 adapted an Economic Development Strategy to "Revise Key Land Use and Transportation Policies to Reflect the New Realities of the San Jose Economy"- the details of this strategy, as well as other proposed or approved development plans should have been included in the DEIR and the traffic analysis.

**Response G-2**

Information regarding the City's Economic Development Strategy has been added to the text of the EIR (refer to Section IV. *Revisions to the Text of the EIR*). The addition of this text does not change any of the impacts or mitigation measures identified in the Draft EIR.

The details of future development proposals throughout the City will be provided to the public, in accordance with state law and City requirements, at the time applications are filed and such information is available.

### **Comment G-3**

It maybe necessary to exempt (protect) a small number of specific intersections to achieve reasonable economic development and infill housing objectives but the city has not clearly provided in the DEIR to the public the available proposed or planned development information available to city decision makers.

The residents have a legal right to participate in the city's decision making process but without adequate disclosure of the primary reasons behind the proposed LOS modification and the city's available proposed development information, we and city residents are precluded from participating in an informed and reasonable manner.

We have seen in the past that when relevant information is withheld or not included in important city policy or development discussions it results in residents questioning the integrity of the city's decision making process and the reasons for lack of fully disclosure.

San Jose elected officials and staff may use the argument that the DEIR requirements or other laws do not require this DEIR disclosure but the residents of San Jose expect and deserve that the city adhere to a higher disclosure standard and will fully and completely disclose all reasons for a change an important city policy that affect quality of life and neighborhood business district viability.

### **Response G-3**

It is not clear from this comment what type of information is believed to have been left out of the Draft EIR. No response is, therefore, possible.

The environmental review process for this proposed policy modification project, including preparation of the Draft EIR, has been completed in accordance with all of the public outreach and noticing requirements of CEQA (Guidelines Sections 15082 through 15087, and 15105) and the City of San José.

Prior to completion and circulation of the Draft EIR, a Notice of Preparation (NOP) was prepared and circulated for a period of 30 days, from August 1, 2002 to August 30, 2002, in accordance with CEQA Guidelines Section 15082. When the project was revised to include 13 Protected intersections, a revised NOP was then circulated for another 30-day period from August 27, 2003 to September 25, 2003. Issues raised in the comments received on the NOP were addressed in the Draft EIR, and the actual comment letters were provided in Appendix A of the Draft EIR. A public EIR scoping meeting was held on August 21, 2002 (refer to Appendix A of the Draft EIR) (in accordance with Guidelines Section 15082). A Notice of Public EIR Scoping Meeting was published in the San Jose Mercury News on Thursday, August 8, 2002.

The public review period for the Draft EIR was originally set at 45 days, (from August 31, 2004 to October 14, 2004) in accordance with CEQA Guidelines Section 15105. Due to the amount of public interest and some technical difficulties with the web version of the Draft EIR, the public review period was extended another 52 days (for a total of 97 days), to December 6, 2004. A Notice of Community Meeting and Extended Public Comment Period for the Draft EIR was published in the San Jose Mercury News on Monday, November 15, 2004. The City continued to accept public comments on the Draft EIR into February of 2005.



In addition, the City of San José has held eight (8) community outreach meetings, including the following:

- General Plan Community Meetings (October 5 and 6, 2004);
- Transportation Impact (LOS) Policy Specific Community Meetings (October 25, 26, 27, 28 and December 2, 2004); and
- District 6 meeting (November 30, 2004).

The purpose of these meetings has been to provide information about the proposed Transportation Impact (LOS) Policy project, and to gather public input into the environmental review process (refer to Section IV. *Revisions to the Text of the EIR*).

The certification of the Final EIR may be appealed in writing to the City Council by any person prior to 5:00 p.m. on **Tuesday, June 7, 2005**. Such appeal must be filed on the appropriate form and accompanied by filing fees at the Department of Planning, Building and Code Enforcement and must include a statement specifying the basis of the appeal.

No further response is required as this comment does not speak to any specific impacts on the physical environment, nor does it raise any questions about the adequacy of the EIR. The City Council will evaluate the opinion expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

#### **Comment G-4**

Project Alternatives - San Jose residents requested that a measurable traffic level of service (LOS) standard be included in the original general plan when San Jose adapted it in 1975 to assure that quality of life did not diminish as our city approaches build-out. Residents have frequently stated their belief that traffic congestion that exceeds LOS D affects quality of life, neighborhood business district viability and should be mitigated.

The current policy requires large developments that exceed Level D (“Significant congestion on some approaches but intersection is functional. Vehicles required to wait through more than one cycle during short peaks. Delay in seconds 25-40”) to not be approved or be downsized if the traffic can not be mitigated back to Level D.

There are thirteen (13) specific intersections that are proposed to be included on an initial list of “Protected” intersections which the City considers inappropriate for further improvement or expansion. The proposed policy change would exempt (protect) the 13 initial intersections from LOS D requirements and allow the 13 intersections to go to LOS F (“Total breakdown. Stop and go conditions. Delay in seconds greater than 60”).

LOS F is unacceptable to the residents of San Jose, and will result in decrease in quality of life, loss of business to small businesses in the intersection areas due to traffic congestion, potential decrease in residential property values and an increase in environmental impact for the San Francisco Bay Area is currently a non attainment for ozone and particulate matter.

We recommend that the modified policy should only be allowed to go to a maximum of LOS E (“Severe congestion with some long back ups. Blockage of intersection may occur. Vehicles are required to wait through more than one cycle. Delay in seconds 40-60”) before proposed

development would be scaled back or not approved by the city for a very limited number of city intersections. We recommend that the policy should clearly state these LOS excepted (protected) intersections are not routine means of bypassing the residents desire for LOS D to accommodate development except under unusual or exceptional circumstances.

#### **Response G-4**

The commentor's opinion the revised LOS policy would result in a decreased quality of life, loss of business to small businesses, and a potential decrease in residential property values is noted, however these potential concerns are not environmental impacts and so not addressed in the EIR nor require a substantive response. The physical environmental impacts of the proposed policy modifications are evaluated in this EIR. The commentor's preference for maintaining LOS E as a policy is noted, and an Alternative to the Proposed Project that would only allow the level of service (LOS) at these 13 intersections to deteriorate to LOS E is evaluated on page 98 of the Draft EIR (Alternative C).

The air quality impacts of the project were evaluated in Section II.C. Air Quality of the Draft EIR. The Draft EIR acknowledges on page 80 that Santa Clara County is currently classified as a "nonattainment" area for ozone and particulate matter.

#### **Comment G-5**

Limited to 5-6 Intersections - It would probably be acceptable to many residents to exempt (protect) on a very limited basis specific intersections from the LOS D policy after full disclosure of the expected impacts of the proposed development but unfortunately the city has not disclosed the available proposed development information to the public in this DEIR. We recommended that only 5-6 intersections be exempted (protected) until the impacts are fully studied and disclosed to city residents.

#### **Response G-5**

An Alternative to the Proposed Project that would only protect five (5) intersections is evaluated on page 97 of the Draft EIR (Alternative B). This Reduced Number of Intersections Alternative would involve designating only five intersections as not requiring further traffic mitigation improvements, and allowing the remaining eight intersections to continue to be subject to LOS Policy requirements (i.e., maintain LOS D).

The Draft EIR fully evaluates and discloses the impacts of placing all 13 intersections on the list, as proposed. As stated on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated "Transportation Impact Policy" which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City's transportation system, particularly the adopted General Plan Traffic LOS Policy.

The proposed Transportation Impact Policy change does not include any construction or physical development. However, by allowing traffic conditions to worsen at the study intersections, the project would indirectly allow for the approval of additional development in the vicinity of these intersections. The impacts likely to result from this increment of additional development in the vicinity of the Protected intersections are evaluated in the Draft EIR. It is not known what other "available proposed development information" the

commentor is referencing in this comment. Therefore, no additional response to this comment is possible.

#### **Comment G-6**

Air Quality - The DEIR assumptions on a lowering of vehicle emissions due to newer vehicles in the future is speculative since known development proposals have not been studied and since many new residents will come from other states with older vehicles and due to the high cost of living in the area would delay buying newer vehicles.

#### **Response G-6**

The air quality analysis prepared for the Draft EIR was prepared in accordance with the requirements of the California Air Resources Board (ARB), the Bay Area Air Quality Management District (BAAQMD), and the City of San José. The ARB model for emissions forecasting includes an assumption for the replacement of older vehicles with newer vehicles each year. This assumption is based on statistical data gathered by the ARB over recent decades and is intended to account for the fact that newer vehicles individually generate lower emissions than older vehicles.<sup>1</sup> (It should be noted that vehicles from other states do not generate substantially more emissions than vehicles registered in California and will be replaced with newer vehicles at roughly similar rates.)

As described in Section *II.C. Air Quality* and Appendix D of the EIR, the project would not result in significant impacts according to the City's and BAAQMD's thresholds of significance.

#### **Comment G-7**

Future Environmental Review - Additionally the initial study only listed 11 intersections and now the city requests 13 intersections and the VTA has requested 9 additional intersections be added to the currently 13 proposed exempted (protected) intersections but until the additional studies on the environmental impact have been done no additional intersections be added. The modified policy should clearly state that any additional intersections can only be added once a year after the city's annual LOS review and additional environmental impact intersection reviews.

#### **Response G-7**

As stated on page 46 of the Draft EIR, at the time the Initial Study was prepared, eleven "protected" intersections were contemplated. Since that time, two additional intersections have been added to the list. The addition of these intersections was evaluated as part of the EIR analysis, and did not change the issues which the Initial Study found would need to be evaluated in this EIR. The scope of the EIR was not changed because it evaluated 13 intersections instead of eleven.

It should be noted that intersections could be added to the Protected intersection list throughout the year, however any additions must follow the guidelines as explained in Appendix A of the policy (refer to Section *IV. Revisions to the Text of the EIR*).

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<sup>1</sup> Donald Ballanti, Certified Consulting Meteorologist, personal communications, April 2005.

### **Comment G-8**

Mitigations - The calculation of the Alternative Transportation System Offset fee should be calculated on the basis of similar intersections not a city wide average since the exempted (protected) intersections are in built up urban areas where the mitigation costs are greater. The use of a city wide cost average results in the under funding of the city's fee as has happened with city park impact fees. Additionally the fee should have an automatic annual cost adjustment.

### **Response G-8**

The value of the Alternative Transportation System Offset fee for improvements was calculated by obtaining the average cost of typical mitigation for an average development project. In many cases, the mitigation costs associated with an infill development project could be minimal, while for others, these costs could be more significant, so the average cost is the most equitable way to determine the value. The policy now contains an automatic annual cost adjustment to account for inflation (refer to Appendix A in Section IV. *Revisions to the Text of the EIR* of this report).

### **Comment G-9**

WGNA is not objecting to the city's proposed development plans and probably would support most of the proposed plans but at this time since the city has not provided the WGNA and city residents with the expected full disclosure information the residents can not be expected to have a fully informed opinion on the proposed modifications, the DEIR or the proposed development plans.

The current and proposed LOS policy has a number of exemptions for small developments, downtown and other planned areas so the major impact of the modified LOS proposal would be to make possible over 26 million sq ft of large developments in the areas of the 13 intersections not possible under LOS D.

We have recommended changes to the proposed Transportation Impact Policy and the Level of Service policy so that reasonable economic development and infill housing can be allowed but not at the expense of city quality of life and the viability of neighborhood business districts.

### **Response G-9**

This comment is not clear as to what information was believed to have not been fully disclosed. The Transportation Impact (LOS) Policy revisions are not specifically proposed in support of any particular development, but to facilitate implementation of the City's General Plan, which is a public document. The 13 intersections were identified based on their locations within special planning areas and their importance in maintaining the City's Smart Growth goals and policies.

## **H. RESPONSES TO COMMENTS FROM PATTI BOSSERT, DATED DECEMBER 6, 2004**

### **Comment H-1**

I live in Rosemary Gardens Neighborhood which is just south of the North San Jose area. Our neighborhood, an older established neighborhood of approximately 450 single family houses, is very vulnerable to any traffic and air quality challenges. We are surrounded by Highways 101, 87, 1-880 and are next to the Airport. We can only enter and exit our neighborhood from the east side through one of three streets to North First Street. There are already environmental impacts with the proposed development intensification along North First Street outlined in the Rin Con Annex Plan, as well as the decision of the City to make the main entrance to the Airport from North First Street through Skyport. Besides the above, the current plan to have a huge development just north of us on North First Street will have additional significant environmental impacts. Any City-wide changes in [sic] traffic policy will have a direct impact on [sic] neighborhood. The Planning Commission and City Counsel [sic] should not implement any changes in current transportation and planning policies that have a negative impact on the environment and the residents.

### **Response H-1**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. It should be noted the North San Jose Policies Update Project mentioned in the comment is not the subject of the EIR, and is rather the subject of another EIR entitled "*North San Jose Development Policies Update*." No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment H-2**

I have been out of town and only just recently learned that City of San Jose is considering a plan to eliminate rules that require builders to mitigate interchanges if new development would cause traffic conditions to deteriorate from "significant congestion" to "severe congestion". Even though this is only proposed for 13 intersections at this time, such a change would be setting a precedent that any development could manipulate for their own needs rather than care about how neighborhoods and communities are impacted by the traffic and air pollution.

### **Response H-2**

There are a number of modifications proposed to the City's Transportation Impact (LOS) Policy, in addition to not requiring expansion of certain specified intersections. The purposes of the proposed revisions include the creation of a policy for requiring development to construct improvements in neighborhoods that are being impacted by spill-over traffic.

The proposed policy will not actually "eliminate rules that require builders to mitigate" intersections. The purpose of the Transportation Impact (LOS) Policy is to identify intersections that cannot be expanded without adverse consequences to other transportation facilities, nearby land uses, proximate neighborhoods, or some combination of these. Any project that does not have to mitigate because of this List of Protected Intersections will instead be required to construct improvements in the effected neighborhood (see the discussion on page 27 of the Draft EIR).

### **Comment H-3**

Rosemary Gardens neighborhood is already often exposed to Airplane fumes and if there are fewer traffic controls, then we will suffer with increased traffic as well as air pollution from the vehicles stalled in traffic on North First Street. Although because of the weak economy, the traffic may appear to be less, city planners and the City counsel [sic] should not weaken traffic requirements. In particular, these traffic requirements should not be weakened without significant public input and discussion of the implications of any proposed changes. I am not aware of any public meetings or outreach to discuss the impact of these planning changes in my neighborhood, This proposed change should be thoroughly discussed by the public, especially those directly effected before any action is taken by the Planning Commission, Mayor and City Counsel.

### **Response H-3**

The traffic and air quality impacts of the proposed Transportation Impact Policy modifications are evaluated in Sections *II.B. Transportation* and *II.C. Air Quality* of the Draft EIR, respectively.

The environmental review process for this proposed policy modification project, including preparation of the Draft EIR, has been completed in accordance with all of the public outreach and noticing requirements of CEQA (Guidelines Sections 15082 through 15087, and 15105) and the City of San José.

Prior to completion and circulation of the Draft EIR, a Notice of Preparation (NOP) was prepared and circulated for a period of 30 days, from August 1, 2002 to August 30, 2002, in accordance with CEQA Guidelines Section 15082. When the project was revised to include 13 Protected intersections, a revised NOP was then circulated for another 30-day period from August 27, 2003 to September 25, 2003. Issues raised in the comments received on the NOP were addressed in the Draft EIR, and the actual comment letters were provided in Appendix A of the Draft EIR. A public EIR scoping meeting was held on August 21, 2002 (refer to Appendix A of the Draft EIR) (in accordance with Guidelines Section 15082). A Notice of Public EIR Scoping Meeting was published in the San Jose Mercury News on Thursday, August 8, 2002.

The public review period for the Draft EIR was originally set at 45 days, (from August 31, 2004 to October 14, 2004) in accordance with CEQA Guidelines Section 15105. Due to the amount of public interest and some technical difficulties with the web version of the Draft EIR, the public review period was extended another 52 days (for a total of 97 days), to December 6, 2004. A Notice of Community Meeting and Extended Public Comment Period for the Draft EIR was published in the San Jose Mercury News on Monday, November 15, 2004. The City continued to accept public comments on the Draft EIR into February of 2005.

In addition, the City of San José has held eight (8) community outreach meetings, including the following:

- General Plan Community Meetings (October 5 and 6, 2004);
- Transportation Impact (LOS) Policy Specific Community Meetings (October 25, 26, 27, 28 and December 2, 2004); and
- District 6 meeting (November 30, 2004).

The purpose of these meetings has been to provide information about the proposed Transportation Impact (LOS) Policy project, and to gather public input into the environmental review process (refer to Section IV. *Revisions to the Text of the EIR*).

The certification of the Final EIR may be appealed in writing to the City Council by any person prior to 5:00 p.m. on **Tuesday, June 7, 2005**. Such appeal must be filed on the appropriate form and accompanied by filing fees at the Department of Planning, Building and Code Enforcement and must include a statement specifying the basis of the appeal.

#### **Comment H-4**

Instead of making decisions for short term benefit, the Planning Commission and City Council should now look at the long term impacts of planning policy, such as this weakening of traffic planning laws. It will be much more costly to fix problems in the future, than plan for them adequately today. We are still today dealing with the negative impacts of the infamous leap frog development of San Jose in the 1950-60's and other planning decisions.

#### **Response H-4**

Please refer to the response to comment H-2 above.

#### **Comment H-5**

Please do not make such a drastic change in planning philosophy that will impact all of the residents of San Jose for now and future generations. Let's carefully consider our environment and the future of San Jose. Please vote NO to the proposed changes to the Traffic LOS Policy.

#### **Response H-5**

This comment expresses an opinion about the project itself and does not refer to an environmental impact or to the adequacy of the EIR. No further response is required.

## **I. RESPONSES TO COMMENTS RECEIVED FROM NINA AND MARC BOYD, DATED DECEMBER 6, 2004**

### **Comment I-1**

The Transportation Impact Policy (TIP) is a policy that violates the most important responsibility of local government; that is, to protect the public's health and safety. Never before has the city of San José decided to "walk away" from its responsibility to protect the health and safety of residents within its jurisdiction. By allowing "protected" intersections to be exempt from levels of service (LOS) guidelines; TIP will allow unrestricted growth near 13 "protected" intersections; and will essentially begin a process (by design) of diminishing the quality of life in San José.

Page ix of the summary states:

*"By protecting the physical layout of intersections, the project would protect bicycle and pedestrian facilities, thereby encouraging the use of alternative modes of transportation."*

TIP is a *de facto* policy of "gridlock planning." As expressed below, the automobile has a long history as the unrivaled transportation choice in our culture.

*The car is an amazing piece of technology that has greatly extended our range of choice as to where to live, work, shop, and play. No other form of transport can compete with the automobile in terms of door-to-door mobility, freedom to time one's arrivals and exists, protection from inclement weather, and comfort, security, and privacy while in transit. (Bundy, Emory, "Sprawl and Congestion – is Light Rail and Transit-Oriented Development the Answer?" Center for the New West, June 17, 1999.)*

TIP has failed to provide or conduct correlation studies to determine whether rising congestion levels has [sic] a strong positive correlation with rising levels of alternative modes of transportation. Without objective correlation analysis, TIP fails to provide evidence that as congestion rises, alternative modes of transportation also rises. Therefore, TIP is a flawed policy.

### **Response I-1**

This comment expresses the letter writers' opinion about the proposed project. The final paragraph requests that "correlation studies" be done to provide evidence that as congestion rises, "alternative modes of transportation also rises". This comment seems to suggest that the EIR is claiming that the increased congestion at the 13 Protected intersections will increase transit use.

Neither the proposed Transportation Impact (LOS) Policy [TIP] nor the EIR claim quantitative increases in transit use would result from "increased congestion". Rather, the policy modifications propose that automobile-related roadway improvements not be allowed to diminish the quality or capacity of non-auto-related transportation facilities. It is assumed that if intersection improvements are prohibited from reducing the capacity of sidewalks and bicycle lanes, and if street capacity is not allowed to expand at the expense of bus stops, sidewalk protection, and similar amenities, then people would be more apt to use the sidewalks, bicycle lanes, and bus stops.



Additionally, projects that would result in increased congestion at the Protected intersections would be required to construct improvements to the multi-modal transportation system in the area of the increased congestion. This also is assumed to increase the likelihood that people would use these alternative systems.

The EIR acknowledges that, if development is allowed to proceed without expanding the vehicular capacity at certain intersections, then congestion will increase at those intersections. This is documented on pages 73-75 of the Draft EIR. The conclusion on page 77 reflects the City's understanding that there will be significant impacts from the proposed policy.

### **Comment I-2**

Traffic congestion in the City of San José (in 2002) cost San José residents 77 million gallons of (wasted) gas. If you factor in the cost of time (wasted), the cost of congestion for San José residents was 871 million dollars in 2002. (*Texas Transportation Institute. Components of the Congestion Problem, 2002 Urban Area Totals, Table 2.*) Instead of adapting [sic] a policy of abandoning LOS guidelines at 13 "protected" intersections, the City should enact a moratorium on approvals of new projects impacting intersections already at capacity. The moratorium can be lifted when bike lane facilities are improved, public transportation numbers improve, ride sharing programs are enacted, work at home programs are created, pleasant and safe walkways are in place, and residential developments are created within (or near) shopping villages.

### **Response I-2**

This proposal is very similar to the "No Project Alternative" evaluated on pages 97-98 of the Draft EIR. The comment also expresses an opinion about the proposed project, but does not refer to an environmental impact or to the adequacy of the EIR.

### **Comment I-3**

TIP contains a list of fifty-seven transportation policies and nine trails and pathways policies (DEIR pages 37-42). All but three contain the word "should" and therefore these are "recommendations" and not policies; consequently they are misleading and should be eliminated from TIP. (one of the other three "policies contain the word "may;" another uses the word "encourage;" and the other is a reference to the American With Disabilities Act (ADA) and cannot be deferred)

### **Response I-3**

As stated on page 30 of the Draft EIR, in conformance with Section 15125(d) of the CEQA Guidelines, the Draft EIR contains a discussion of the consistency of the proposed project with applicable General Plans and regional plans. The policies listed on pages 37-42 of the Draft EIR are existing, approved City of San José General Plan policies related to transportation. As stated on page 33 of the Draft EIR, the San José 2020 General Plan is an adopted statement of goals and policies for the future character and quality of development of the community as a whole. The General Plan is a long-range planning document; its policies are not intended to be absolute, but rather identify standards and goals that are intended to guide individual near-term development.

#### **Comment I-4**

On page thirty-five, LOS goals are discussed; item one states:

1. [To] provide a full range of City services to the community at service levels consistent with a safe, convenient and pleasant place to work.

Therefore by exempting thirteen intersections from compliance with LOS goals, TIP (by design) is promoting less safe, less convenient, and less pleasant places to work, at these 13 intersections.

Therefore TIP violates the 14th Amendment's "Equal Protection Clause" contained in the U.S. Constitution.

#### **Response I-4**

This comment seems to state that the proposed modifications to the City's Transportation Impact (LOS) Policy will render some parts of the City less safe, less convenient, and less pleasant to in which to work.

Planning under the City of San José's General Plan and its existing Level of Service (LOS) Policy requires that the City's decision makers make choices about, for example: (1) expanding local intersections to dimensions that encourage significant numbers of automobiles to travel along a particular roadway, and/or (2) denying development that may support economic growth and jobs, or development that could provide housing at infill locations which are near jobs and services; and/or (3) allowing incremental increases in congestion at certain locations; and/or (4) interfering with the safe operation of existing and planned transit systems; and/or (5) improving the choices available to the traveling public, such as safer sidewalks, protected bicycle lanes, and comfortable bus stop locations. The proposed modifications to the Transportation Impact (LOS) Policy [TIP] still require that City decision makers must make these same kinds of choices. The proposed TIP modifications establish a policy-based mechanism for making some different choices than are currently available, and places those decisions more clearly in the context of the existing General Plan goals and objectives for encouraging use of more than just automobile based transportation.

All local planning requires a balancing of resources, goals and objectives, and community priorities. All general plans must consider the needs and constraints of individual neighborhoods and the requirement that local government provide a range of services.

In making some of these choices, cities and counties must follow the procedural requirements of local and state laws and meet their mandatory responsibilities under the state and federal constitutions. The Draft EIR identifies the impacts of making a particular set of decisions, and CEQA requires that the City Council must disclose in written findings their reasons for making those decisions.

There is no basis provided for concluding that the proposed modifications to the Transportation (LOS) Policy would be a violation of the protections of the 14th Amendment of the U.S. Constitution.

### **Comment I-5**

TIP claims that planning restrictions within the General Plan, the zoning codes, and citywide guidelines, are still in place, and therefore will restrict growth. However, anyone who has followed the San José Planning Commission hearings and San José City Council hearings knows that requests to override these “restrictions” are granted with little or no opposition. Therefore these “restrictions” are ineffective and cannot be relied upon.

### **Response I-5**

This is an opinion about the legally mandated planning process. It does not refer to an environmental issue or to the adequacy of the EIR. No further response is required.

### **Comment I-6**

TIP is a policy designed to degrade air quality, increase congestion, and diminish LOS at 13 “protected” intersections. In doing so, TIP acts as a shield to cover significant impacts created by developments; and thus the developer(s) would not be required to mitigate impacts at the intersection affected, because it is the TIP policy that has created the degraded air quality, the increased congestion, and the diminished LOS at the 13 “protected” intersections specified. Instead the money to mitigate impacts would be transferred to other transportation improvements within the area. TIP is a circumvention of CEQA law, and is a violation of the intent and the spirit of CEQA. The transfer of funds violates both the 5th Amendment’s “Due Process Clause” and the 14th Amendment’s “Equal Protection Clause” contained in the U.S. Constitution.

### **Response I-6**

As stated on page 22 of the Draft EIR, the project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy, which would replace City Council Policies 5-3 and 5-4. The changes in the physical environment that could result from implementation of this policy are the subject of this EIR. The Draft EIR identifies that the proposed Transportation Impact Policy (TIP) would result in significant traffic and circulation impacts at the 13 intersections.

As described on page 27 of the Draft EIR, if a traffic impact analysis (TIA) prepared for a future project, identifies what is currently considered a significant LOS impact to one of these 13 intersections, that project would not be required to provide further vehicular capacity-enhancing improvements to that intersection in order to find conformance with the General Plan. The traffic impact would remain identified as a significant impact for the purposes of CEQA. No circumvention of CEQA is allowed by the proposed Transportation Impact (LOS) Policy [TIP] modifications.

As also described on page 27 of the Draft EIR, improvements provided to other parts of the transportation system are not considered “mitigation” as defined by CEQA. These other improvements would not reduce or avoid the significance of the impacts to the 13 protected intersections. Rather, the other improvements would be a means of providing substantial additional benefit to the community by improving the overall multi-modal transportation system, which the decisionmakers would consider in evaluating whether or not to approve the proposed future project.

The EIR prepared for this project is a Program-level document, in accordance with CEQA Guidelines Section 15168. In conformance with the CEQA Guidelines, and as also stated on page 27 of the Draft EIR, a future development project that conforms to the proposed TIP, which results in traffic impacts at one or more of the protected intersections that fall within the parameters of this EIR, will not be required to prepare an EIR specifically to address its traffic impact at one of the Protected intersections. The future project may use this EIR as a base and “tier” off of it, as allowed by CEQA (Guidelines Section 15152 and 15168) and the City’s Environmental Review Ordinance. Again, this EIR would only be used for the purpose of addressing the traffic impacts of the future project at one or more Protected intersections. If that future project would result in other significant environmental impacts (such as traffic impacts to another intersection or other environmental impacts), that project would be required to prepare its own EIR to address those other impacts.

There is no transfer of money to mitigate impacts to other transportation improvements. Developers would not improve certain intersections that, according to the proposed policy, cannot be further expanded without adverse effects on the community. The developers could downsize their projects or pay for other improvements to the multi-modal systems in the area.

### **Comment I-7**

Currently, the LOS at the 1st and Taylor intersection, during the peak PM period, is the second lowest (LOS E), of all 13 intersections designated by TIP. The projected LOS at 1st and Taylor, if this policy is implemented, would be an LOS F. LOS F in the (projected) case is misleading. LOS F begins when a wait time exceeds 60 seconds to proceed across an intersection. TIP “projects” the wait time at 1st and Taylor during peak PM periods at 145.5 seconds. That is the equivalent of LOS F-F-D or 2½ times beyond LOS F. This is clearly a violation of the 14th Amendment’s “Equal Protection Clause” contained in the U.S. Constitution.

### **Response I-7**

The levels of service at all of the intersections evaluated in this EIR were calculated using the City’s adopted methodology, consistent with the traffic analyses prepared on projects throughout San José. This is the same methodology adopted by the Santa Clara County Congestion Management Agency and by other cities in the County. The interpretation in this comment of the anticipated LOS at North First Street and Taylor Street is the opinion of the letter writer and does not reflect professional standards for evaluating intersection congestion.

This comment also expresses an opinion regarding the proposed project. It is not clear from this comment why the letter writer believes that the interpretation of LOS at North First Street and Taylor Street is a violation of the 14th Amendment of the U.S. Constitution. No response can, therefore, be provided.

### **Comment I-8**

By failing to notify property owners at the 13 “protected” intersections; and failing to notify the property owners within the “special planning areas,” TIP has violated disclosure policies required of local governments. Property owners within 1000 feet of the 13 “protected” intersections were not notified of TIP hearings, either at their place of residence or at the residence affected by TIP. Property owners within the “special planning areas” were also not notified of TIP hearings, either at their place of residence or at the residence affected by TIP. At the public hearing we attended, we

did not observe anyone taking notes or attempting to record comments. So, in effect, the hearing is in question, as a legitimate attempt to consider and evaluate public comments. By failing to properly notify affected property owners, TIP is a violation of the “Due Process Clause” contained in the 5th Amendment of the Constitution of the United States.

### **Response I-8**

This comment identifies a hypothetical set of noticing requirements for which no basis is established, and claims that those requirements were not met. There has not yet been a noticed public hearing on the proposed project because the project is not yet being considered for approval by the City Council. Because this project is a Citywide policy change, a direct mailing of notices was not practical, therefore the notification was placed in the Mercury News. The Notice of Availability of the Draft EIR was published in the San Jose Mercury News on August 31, 2004, was posted at the County of Santa Clara, and was sent to the Martin Luther King Jr. Main Library, consistent with the requirements of Guidelines Section 15087. Copies of the Draft EIR have been available to the public and it has been posted on the City’s website since September 1, 2004. The cover page of the EIR advises the reader that there will be a public hearing on the EIR before the City’s Planning Commission (although the date has been delayed). The Notice of Public Hearing and Appeal was placed in the San Jose Mercury News on May 19, 2005.

Please also refer to response to comment F-2.

### **Comment I-9**

Before the City of San José approves new developments that will adversely impact LOS guidelines at 13 “protected” intersections; congestion reduction policies need to be implemented. If the sixty-four policy “recommendations” (DEIR pages 37-42) were implemented, there would be no need to eliminate current LOS standards at the 13 intersections. TIP is flawed, unnecessary, and violates property owners Constitutional protections. We believe the impacts from TIP will be the most severe at the intersection of North 1st and Taylor St., where our property is located. Therefore, we respectfully urge the San José City Council not to approve this policy. The good people of San José deserve a strategy to address transit-oriented developments within the current LOS framework. It is possible to reduce congestion, increase density, and increase alternative modes of transportation; without LOS levels exceeding present guidelines and without impacting sidewalks, bike lanes, or private property.

### **Response I-9**

The recommendations of the letter writer are acknowledged and should be directed to the City Council, who will be considering the project addressed in this EIR. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**J. RESPONSES TO COMMENTS RECEIVED FROM SUSAN CLAIR,  
DATED DECEMBER 3, 2004**

**Comment J-1**

I have lived in District 6 since 1990 and I am very concerned about the proposed modifications to the above named policy. Under no circumstances do I want to see the current Policy ignored or modified.

The reason why DOT has a Transportation Impact LOS Policy is to safeguard the community from untenable traffic conditions. City planners had the best interests of both the community and developers when they laid out the policy. Just because planners and developers did not appropriately plan for increased development over time is not an adequate reason to ignore the Policy. Allowing developers carte blanche will negatively impact adjacent properties, sidewalks, and transit stops.

**Response J-1**

This comment is noted. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

It should be noted that, as stated on page 28 of the Draft EIR, the list of protected intersections evaluated in this EIR includes intersections for which the City believes there are no additional vehicular traffic improvements that could physically be built without adversely affecting other transportation modes (i.e., sidewalks, bicycle lanes, transit stops).

**Comment J-2**

The mitigating measures such as multi-modal transportation improvements including traffic calming have been suggested below by my council member, Ken Yeager. These measures are not desirable alternatives as they will not mitigate or improve traffic flow conditions. Traffic calming will only force additional traffic thru [sic] the already congested intersections. Traffic calming does not respect the spirit of the current Policy nor does it ameliorate any of the problems of urban traffic congestion. Multi-modal [sic] transportation I assume includes buses, pedestrian and bicycle traffic. I also fail to see any correlation between bike lanes and cross walk improvements making any difference in relieving congestion. Buses are already underutilized.

**Response J-2**

As described on page 27 of the Draft EIR, if a future development project would result in what is currently considered a significant LOS impact to one of the protected intersections, that project would not be required to provide further vehicular capacity-enhancing improvements to that intersection. Instead, the project proponent would be required to provide improvements to other parts of the transportation system, in order to conform to the City's General Plan. However, these other improvements are not considered "mitigation" as defined by CEQA; these other improvements would not reduce or avoid the significance of the impacts to the 13 protected intersections. Rather, the other improvements would be a means of providing additional benefit to the community by improving the overall multi-modal transportation system, which the decisionmakers would consider in evaluating whether or not to approve the proposed future project.

### **Comment J-3**

For example, the properties adjacent to the intersection of Meridian [sic] and West San Carlos have been developed over the past 10 years. All the commercial developments (Walgreen's, McDonalds and the newest development in progress) were built right up to the curb, leaving no options for road expansion or turning lanes. The intersection is at capacity. Sometimes it takes two lights to move through the intersection during rush hour. The traffic calming measures mentioned below "gateway features, pedestrian level lighting, bike lanes" do not make sense. A bike lane would be even more dangerous with increased traffic. There already is plenty of pedestrian lighting as a result of Redevelopment monies. Gateway's, while attractive, will not relieve congestion.

### **Response J-3**

The commentor's example illustrates the intent of the proposed Transportation Impact (LOS) Policy project. Under the current LOS Policy, if a future development project in the area of the Meridian Avenue/West San Carlos Street intersection would result in significant traffic LOS impacts to that intersection, the project would be required to provide additional vehicular capacity. In this case, the adjacent land uses (commercial shops) are built close to the roadways, and little room exists for expanding the vehicular traffic capacity at this intersection. Under the existing policy, a developer may need to acquire right-of-way from these properties, which could require or include removal of sidewalks, bicycle lanes, bus stops and street trees, and/or demolition of the buildings.

Under the proposed policy, a future development project that would result in significant traffic impacts at this intersection would not be required to provide additional vehicular capacity. Rather, a future project would be required to provide other system-wide roadway improvements or other non-vehicular improvements, such as adding bicycle lanes or improving pedestrian access near the intersection to facilitate the use of other modes of transportation. The exact improvements desired and the best locations for those improvements would be determined based on consultation with the neighborhood and businesses near each intersection, as described in Appendix A of the policy (refer to Section IV. *Revisions to the Text of the EIR* of this report). In addition, the City is beginning a community process to create improvement master plans for the Community Improvement Zones (refer to Figure 4 in Section IV. *Revisions to the Text of the EIR* of this report) that will determine the priorities of each area.

### **Comment J-4**

Another intersection, Stevens Creek and Winchester is already a traffic debacle. I can not even imagine more traffic going thru the intersection. I personally do not patronize the businesses in that area as the traffic is too dense. It is easier and quicker for me to go in another direction or use the highway. I am already angry at engineers who determined the 280/880 juncture would not be impacted. As the holiday approaches I await the accidents from the backups on the highway for the exit leading to Valley Fair.

#### **Response J-4**

This comment is noted. The City Council will evaluate the opinion expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any new environmental issue or questions about the adequacy of the EIR.

#### **Comment J-5**

As we move towards increasing densities the problem is only going to get worse. Ignoring a good policy is unjustifiable.

#### **Response J-5**

As described in Section *I. Description of the Project* of the Draft EIR, the City is not proposing to ignore or eliminate the LOS Policy, only to modify it.



**K. RESPONSES TO COMMENTS RECEIVED FROM CHRISTINE CLIFFORD,  
DATED DECEMBER 3, 2004**

**Comment K-1**

I recently read an article in the Berryessa Sun regarding developers' fees and mitigation agreements for all the high density housing being approved along Capitol and Penetencia [sic]/Berryessa Roads. The article quotes you as saying there is really no place for developers to add turn lanes or road improvements since it has all been built up due to the Light Rail. It also states that the city is considering possibly charging the developers some other type of fee in lieu of traffic mitigation. I am unable to make it to the planning meeting on the 2nd, but would like to send my input to you.

First, I am a member of the Summerdale Elementary School Site Council, and want to pass on the concerns of the school to you here. Summerdale is already over capacity at 450 students, when it was designed for 350. The existing traffic in and out of Summerdale is already very difficult. It backs up onto Penetencia [sic] and out onto Berryessa when parents are dropping off and picking up their children. Continued increases of high density housing will make the population of the school rise even more and increase this congestion further. Although Summerdale can continue to add portable classroom buildings, it cannot expand it's playground, it's bathrooms, it's staff facilities, it's cafeteria, it's office, or it's parking lot - all of which are already maxed out due to overcrowding. The same is true of Piedmont middle school.

**Response K-1**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. As described on page 22 of the Draft EIR, this EIR evaluates the physical environmental effects which could occur with implementation of the proposed Transportation Impact (LOS) Policy policy. However, it should be noted that no physical development, particularly residential development, is proposed as part of this project. Project-specific environmental review will be completed for any future development proposals, and in the case of residential development proposals, will evaluate potential impacts upon school facilities and services. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment K-2**

I invite anyone to try and navigate Summerdale Drive or Piedmont Road near Berryessa at 8:15 in the morning or 2:30 in the afternoon. They will sit in cycle after cycle of lights in a row of cars. Adding more students and more traffic due to the additional housing is a very bad idea. The lack of planning regarding how all of this development will impact neighborhood schools is not in this areas [sic] interest. In addition, a lack of improvements to the roads will only increase the existing congestion and traffic. People will increase their use of back streets through our neighborhoods in an attempt to avoid all the clogged up intersections. This is unsafe for our children and has a very negative impact on the school site itself.

## **Response K-2**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The EIR acknowledges that, if development is allowed to proceed without expanding the capacity at certain intersections, then congestion will increase at those intersections. This is documented on pages 73-75 of the Draft EIR. The conclusion on page 77 reflects the City's understanding that there will be significant impacts from the proposed policy.

The TIA prepared for the EIR evaluated the effects of the proposed Transportation Impact Policy on other intersections, particularly those near the designated "Protected" intersections. A discussion of the potential for travelers to seek alternative routes and increase congestion at other intersections is provided on page 75 of the Draft EIR. As stated on page 75:

*"With the proposed policy modification, traffic congestion at other intersection throughout the City would also incrementally increase. However, the project would not cause the LOS to drop below acceptable levels at any of the other intersections during the AM or PM peak hour, unless those intersections become Protected intersections by approval of the City Council, which is too speculative to identify at this point."*

All future development proposals would be subject to the City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

## **Comment K-3**

The neighboring services such as grocery stores and gas stations are also impacted. I was in Safeway on the Monday evening before Thanksgiving, and granted, that is usually a high volume time for shopping. However, there was no place to park in the existing parking lot. I had to wait for someone to leave. It took me 45 minutes to get checked out of the store. It was so crowded the line for checkout went around the back of the store. Adding more people and their cars to the mix will make these types of neighborhood services even more difficult to access as well.

## **Response K-3**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment K-4**

I would prefer there be some sort of study of the area done by those who are knowledgeable concerning road and traffic improvements. There may be a number of ways to reduce the congestion on Capitol that you are not aware of. Developer's fees should first go to improving the congestion that will be created on Capitol and the involved intersections. If there cannot be assurances that our neighborhood will have proper support with the traffic that development brings, then as our representative I ask that you stop supporting any type of high density housing.

#### **Response K-4**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. However, the City and VTA have performed an operational study of the Capitol Intersections and determined that to optimize signal timing along the corridor with Light Rail the signal controller must be replaced. The City is in the process of pursuing funding for this project.

#### **Comment K-5**

You told me previously that with Light Rail there were agreements regarding high density housing. I have lived in my home since 1986, when it was built. My neighbors and I did not move into a relatively quiet area with the idea that there would be such massive congestion on side streets and in the main intersections with the advent of Light Rail - which is supposed to decrease traffic, not make more of it. I cannot use the Light Rail to get to my job. I cannot use the Light Rail to get my children to their schools. I cannot use the Light Rail to get to Safeway or Longs. All Light Rail is doing for my little family is increasing housing and increasing congestion. If developer's fees are not going to go to road improvements, then they should go directly to the neighborhood facilities they are impacting - like our schools. I would hate to see them be absorbed into the city budget never to be seen again, while I sit through 3 or 4 cycles of the light trying to get to work.

#### **Response K-5**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment K-6**

Please consider how these fees could best be used to improve the congestion the housing will cause to our roads and our schools. I do not want to live in a downtown atmosphere.

#### **Response K-6**

This comment is noted. The City Council will evaluate the opinion expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**L. RESPONSES TO COMMENTS RECEIVED FROM JANET DARROW,  
DATED DECEMBER 6, 2004**

**Comment L-1**

I am writing to protest the proposed change in transportation policy that would ease the requirement for intersections to meet reasonable LOS levels. If you ask people about quality of life issues, traffic is almost always at the top of their list as a problem. This change would worsen traffic, negatively affect health, and conceivably cost the city and county money.

Your EIR report clearly states that the purpose of this change is to allow development without requiring traffic improvements. While you only identify 13 intersections that would be affected, we all know this policy change will eventually affect many more. The rationalization seems to be that the development will be near transit. People may take transit to work, but they won't use it for shopping, driving children to school, and medical appointments unless all those services are within walking distance or easily accessible via transit. Rather than change the traffic policy, why not impose strict guidelines on new development? Careful planning can include pedestrian and transit friendly design, with car share opportunities, separated bike lanes and limited parking.

**Response L-1**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment L-2**

The EIR included a section on health. There is no mention of the effects of increased carbon monoxide, particulate matter and ozone on pregnant women. Research out of UCLA on air pollution shows an increase of birth defects and low birth weight babies associated with increases in air pollution. (See 1: Wilhelm M, Ritz B. Residential proximity to traffic and adverse birth outcomes in Los Angeles county, California, 1994-1996. Environ Health Perspect. 2003 Feb;111(2):207-16. 2: Ritz B, Yu F, Fruin S, Chapa G, Shaw GM, Harris JA. Ambient air pollution and risk of birth defects in Southern California. Am J Epidemiol. 2002 Jan 1;155(1):17-25. 3: Ritz B, Yu F, Chapa G, Fruin S. Effect of air pollution on preterm birth among children born in Southern California between 1989 and 1993. Epidemiology. 2000 Sep;11(5):502-11). Federal and state standards for air pollution are generally set for adult males, not children and pregnant women, and the health effects are greater in those populations. The cost of ongoing health care and special education for children born with defects and/or at low birth weights is astronomical. Other costs include those for lost work days from the increased number of asthma attacks and other respiratory illness.

**Response L-2**

The air quality analysis prepared for the Draft EIR was prepared in accordance with the requirements of the California Air Resources Board (ARB), the Bay Area Air Quality Management District (BAAQMD), and the City of San José. The BAAQMD *CEQA Guidelines* (1999) provide direction on how to evaluate potential air quality impacts, how to determine whether these impacts are significant, and how to mitigate these impacts. The thresholds of significance used by the City of San José and the BAAQMD account for the

fact that development projects may be located near sensitive receptors, including children, the elderly, people with illnesses or others who are especially sensitive to the effects of air pollutants. According to the BAAQMD CEQA Guidelines, hospitals, schools, convalescent facilities, and residential areas are examples of sensitive receptors.<sup>2</sup>

As described in Section *II.C. Air Quality* and Appendix D of the EIR, the project would not result in significant impacts according to the City's and BAAQMD's thresholds of significance, including carbon monoxide, particulate matter, and ozone.

### **Comment L-3**

I do not believe that gridlock is the only way to get people out of their cars. I am a firm believer in public transportation, and I know we need to build up rather than out in this valley. With a little creativity development can be accomplished without poisoning our air, driving people to road rage, and wasting everyone's time sitting in traffic.

### **Response L-3**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

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<sup>2</sup> BAAQMD CEQA Guidelines, December, 1999. p. 9.

**M. RESPONSES TO COMMENTS RECEIVED FROM KEN EKLUND,  
DATED DECEMBER 6, 2004**

**Comment M-1**

POOR OUTREACH - EXTEND REVIEW PERIOD. I wish that I could respond specifically to the Policy's EIR, but I have not been able to access it. The EIR has not been made widely available and the timeframe for public review has been ridiculously short. I received a CD of the EIR that had been duped by a neighbor, but it proved to be unreadable on my computer. I went to the City website but was unable to find any information about the policy there. These elements and more add up to my conclusion of extremely poor outreach by the City regarding this policy, and my request for the City to extend the public review process and increase the availability of the information.

As you know, Ken Yeager's office did organize a special outreach meeting that I was able to attend, and my comments are directed toward the summary information about the Policy presented at that meeting.

**Response M-1**

Please refer to responses to comments F-2 and I-8 above.

**Comment M-2**

THE POLICY ATTEMPTS TO LINK FLEXIBILITY OF MITIGATION WITH DECREASE IN SERVICE, APPARENTLY FOR POLITICAL REASONS. The proposed change would enable greater flexibility in mitigating traffic impacts: mitigation would no longer be measured in vehicular traffic alone, but would include mitigations improving or protecting pedestrian, bicycle and mass transit traffic. This part of the proposed change is needed and overdue.

However, the policy links this flexibility of mitigation to an abdication of responsibility for traffic volume. There is no reason for this linkage, other than the political expediency of offering neighborhoods a carrot, to hide the stick.

**Response M-2**

The proposed policy will not actually "abdicate responsibility for traffic volume". The purpose of the Transportation Impact (LOS) Policy is to identify intersections that cannot be expanded without adverse consequences to other transportation facilities, nearby land uses, proximate neighborhoods, or some combination of these. As described on page 27 of the Draft EIR, if a traffic impact analysis (TIA) prepared for a future project, identifies what is currently considered a significant LOS impact to one of these 13 intersections, that project would not be required to provide further vehicular capacity-enhancing improvements to that intersection in order to find conformance with the General Plan. Instead, that project will be required to construct improvements in the effected neighborhood (see the discussion on page 27 of the Draft EIR).

As also described on page 27 of the Draft EIR, the traffic impact would remain identified as a significant impact for the purposes of CEQA. Thus, the improvements provided to other parts of the transportation system are not considered "mitigation" as defined by CEQA. These other improvements would not reduce or avoid the significance of the impacts to the

13 protected intersections. Rather, the other improvements would be a means of providing substantial additional benefit to the community by improving the overall multi-modal transportation system, which the decisionmakers would consider in evaluating whether or not to approve the proposed future project.

### **Comment M-3**

THE POLICY IS GROUNDED UPON UNPROVEN AND UNFOUNDED ASSUMPTIONS ABOUT GROWTH IN SAN JOSE. The core of the policy is to allow development of more housing and commercial space in areas that are already at capacity for traffic. The assumption is that there is pent-up demand for this housing and commercial space. There is no evidence of such demand; in fact, the evidence points to exactly the opposite. Rather than growing, San Jose had a net loss in population last year. Both housing and commercial spaces are rife with FOR RENT signs. In my neighborhood, near the southern end of downtown, we jokingly refer to “the nightlight” - the high-rise office building that sheds a glow from its top-story clerestory windows over our neighborhood. This building has been entirely vacant for years and in fact has never had a tenant.

There is no evidence that demand will appear anytime soon. All the forecasts I have read call for slow growth at best for the nation, and for Silicon Valley growth to trail that of the nation. The latest local job growth figures for Silicon Valley put “400 more jobs” in the headline, but when one got to Paragraph 5 of the story one learned that 900 permanent jobs had been lost and 1300 temp jobs had been added. Temp workers will not fuel a boom in housing or commercial space, and no one can identify an industry sector that will fuel a boom here rather than in Austin or Reno.

The policy seems to be a lingering result of the boom times of 1999-2000, when the sponge of San Jose was fully saturated and business cried for more housing and commercial space. But those times are over. The sponge of San Jose has now been wrung half-dry. There is plenty of capacity for people and business, and no evidence of a need for neighborhoods to sacrifice traffic levels of service in order to add the modest capacity we will need as we move forward.

### **Response M-3**

This comment expresses an opinion regarding the proposed policy modification project. The overall objectives of the proposed Transportation Impact (LOS) Policy project are to protect alternative transportation modes and to assist in achieving the goals and policies of the San José 2020 General Plan, particularly those related to transportation and long-term buildout of the City. During a time of slow economic growth, the City is re-evaluating the bases of past planning practices, their viability for stimulating economic recovery, the existence of new economic opportunities, and the extent to which transportation-related policies support or impede each other and related Citywide goals. As described on page 2 of the Draft EIR:

*“In order to reduce the likelihood that ongoing modifications to the street system could compromise or impair the operational efficacy of alternative transportation modes, the City is proposing to update its LOS implementation policy. The specific purpose of the proposed policy change is to guide analyses and determinations regarding the overall conformance of a proposed development with the City’s various General Plan multi-modal transportation policies, which together seek to provide a safe, efficient, and environmentally sensitive transportation system for the movement of people and goods.”*

The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment M-4**

THE POLICY ASSUMES CITIZENS WANT TO STOP GROWTH IN THEIR HOME VALUES.

This rationale was laid out explicitly: the city needs to build massive amounts of new housing in order to stop home values from increasing as they have in the past. I do not believe that citizens have ever been polled about this rationale, because I have no doubt it would fail. For one thing, citizens are aware that the proposed new housing does not depress all home prices, just some. In other words, adding 40,000 new 3-bdrm townhouses will decrease the value of other low-end 3-bdrm houses, and 40,000 new 2-bdrm condos will decrease the value of lower-cost 2-bdrm homes. But the price of 3-bdrm bungalows in the Rose Garden or 5-bdrm homes on an acre along Dry Creek Road will continue to rise, unfettered.

#### **Response M-4**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment M-5**

THE POLICY GIVES TO DEVELOPERS AND TAKES AWAY FROM NEIGHBORHOODS.

Currently, developers looking at projects near the exempted intersections are faced with significant expenditures for traffic mitigation. These expenditures are well above the City's average mitigation cost, because they are dealing with the worst traffic situations in the city. This system works to automatically slow development in areas where infrastructure can't support it, and encourage it in areas where infrastructure can.

If this policy change is implemented, developers are freed from paying an amount which is proportional to the impact their development has on the neighborhood. Developers will be able to build a project that adds traffic to the worst traffic areas of the city, and pay an amount which Planning has set to be the city's average cost.

In other words, the policy change is designed to encourage developers to build in areas with overburdened infrastructure. Why should the citizens and neighborhoods support the City in this? At the very least, the City should set the rate that developers pay in these areas to be equivalent to the cost of mitigation in those areas (NOT in the city as a whole). Otherwise developers will simply be paying less for mitigation overall, and citizens will be paying the rest in reduced quality of life.

#### **Response M-5**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.



### **Comment M-6**

THE POLICY DOESN'T CORRECT THE FLAWS OF THE CURRENT IMPACT SYSTEM.

When I expressed the objection to the developer payout outlined in (4) above, Stephen Haas made an interesting reply. He did not take issue with the facts as I outlined them; instead he criticized the existing system. His point: currently developers may add projects (and traffic) to an area without paying any mitigation cost at all, as long as the project does not cross a mitigation threshold. The developer whose project does cause the threshold to be crossed in effect pays all the mitigation costs.

I certainly agree with Stephen that this is not a very good system. However, the proposed change does not fix this system, as he implied with his reply. This system will be unchanged for areas outside the 13 intersections proposed to be exempted. For the 13 areas around the exempted intersections, the new system will simply allow all developers to pay less than the impact caused.

The proposed change does not improve the current impact system, and should not be represented as such. Instead, correcting the old system is something that neighborhoods have long said the city should do as a separate item.

### **Response M-6**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

As described on page 27 of the Draft EIR, if a future development project would result in what is currently considered a significant LOS impacts to one of the protected intersections, that project would not be required to provide further vehicular capacity-enhancing improvements to that intersection. Instead, the project proponent would be required to provide improvements to other parts of the transportation system, in order to conform to the City's General Plan. The value of this Alternative Transportation System Offset fee for improvements was calculated by obtaining the average cost of typical mitigation for an average development project (refer to Appendix B of the Draft EIR and Appendix A in Section IV. *Revisions to the Text of the EIR* of this report). Please also refer to the response to M-2 above.

### **Comment M-7**

IS IMPROVING SAN JOSE NOW THE DEVELOPERS', RATHER THAN THE CITY'S, RESPONSIBILITY? The meeting's presenters spent some time showing us ways that neighborhoods could be multi-modally improved: better pedestrian walkways, better bike lanes, and so on. They spent almost no time explaining why the City would not provide these improvements itself. "The budget," they said, and shrugged, as if that explained everything (or anything).

### **Response M-7**

This comment is noted. No further response is required as this comment is not related to any environmental issue and does not raise any questions about the adequacy of the EIR.

### **Comment M-8**

TRYING TO PAY FOR OUR INFRASTRUCTURE BY INCREASING OUR INFRASTRUCTURE LOAD IS “PONZI MADNESS”. The policy change appears to be part of a scheme whereupon the City encourages housing and commercial development, especially in North San Jose. As noted before, there’s no clear indication that such encouragement will work or is even necessary. But if it should work, the new housing and commercial developments add to the City’s infrastructure burden, not only in traffic, but in law enforcement, fire protection, city services, and so on.

Stripped to its core, this scheme seems to be nothing more than a pyramid scheme, where today’s round of developer money is used to finance today’s infrastructure obligations... but it also increases our infrastructure obligation, so that the city is even more desperate for more development, and so on. If such a scheme were at work, then we would be seeing bigger and bigger concessions being made to developers, for more and more outlandish development schemes, while city services slipped and quality of life deteriorated. This is exactly what I perceive to be happening with San Jose.

Already, in my neighborhood, police shrug off crimes against property, citizens maintain city property, code enforcement is spotty, and citizens apply for grants to get their streets fixed. And yet we have an active neighborhood that works better than many to activate city resources. It is hard to understand how the city can be so gung-ho to increase its infrastructure burden, except for the reason outlined above.

### **Response M-8**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment M-9**

IS STRIP-MINING THE CITY’S QUALITY OF LIFE REALLY ITS BEST LONG-TERM POLICY FOR GROWTH? The proposed impact change joins other City-sponsored initiatives which in essence pay for economic growth by expending quality of life.

The proposed impact change points up the fallacy of this method. What does it matter if you live in a temperate climate if you’re breathing unsafe levels of particulates from gridlocked traffic every time you step outside? What does it matter if you live near to beaches or redwood forests, or tech jobs if you can’t actually get to them from your house?

The city needs to recognize that QUALITY OF LIFE is THE prime reason that people live here. As long as quality of life is protected, there will always be a demand to live and work here. If our quality of life is expended, then the demand will dry up and present citizens will leave.

### **Response M-9**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

The EIR acknowledges that, if development is allowed to proceed without expanding the capacity at certain intersections, then congestion will increase at those intersections. This is documented on pages 73-75 of the Draft EIR. The conclusion on page 77 reflects the City's understanding that there will be significant impacts from the proposed policy. In addition, the EIR acknowledges (on pages 80-84) that increased congestion at these intersections will incrementally increase regional and local air pollutant emissions.

**Comment M-10**

ENCOURAGING MULTI-MODAL TRAFFIC IS GOOD, BUT THE PROPOSAL ASKS TOO HIGH A COST FOR IT. The city should be commended for acknowledging the need to encourage alternatives to vehicle traffic. But it is impossible to do so when the multi-modal initiative is linked to such a broad abdication of responsibility as is proposed here.

**Response M-10**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR. Please also refer to the response to comment M-2 above.

**N. RESPONSES TO COMMENTS RECEIVED FROM DAVID FADNESS,  
DATED OCTOBER 13, 2004 AND DECEMBER 5, 2004**

**Comment N-1**

I just received a copy of this DEIR today, one day before the deadline for comment. It's curious to me that I wasn't made aware that your DEIR was being circulated for public review, even though I wrote regarding the scope of your EIR on 8/18/02—and my letter is included in your document. If people who respond to scoping aren't notified when the draft EIR is released for public comment, who is?

I am opposed to any change that will diminish our LOS D policy in San Jose.

It's frightening to think what will happen to traffic congestion if we stop even trying to impose mitigation on new development. LOS D was imposed by public demand as a minimum acceptable standard in our original General Plan (GP'75), reflecting dissatisfaction in 1975 with worsening traffic congestion. As I recall, GP'75 showed only twelve intersections at LOS E or worse citywide. Traffic congestion has gotten much worsen [sic] since then, city-wide, apparently as a result of not enforcing our LOS D standard as San Jose's population grew.

Lowering our official LOS standard (or doing multiple-intersection averaging, etc.) will likely mean even worse performance, potentially approaching a de facto LOS F standard in future years.

I seriously doubt that lower performance has now become acceptable to the public. Quite the contrary: Traffic congestion is always cited as a number one problem in public opinion polls taken in Santa Clara County and the Bay Area. Lowering our traffic congestion standard is NOT what your constituents want or deserve. Has our city government given up, admitting defeat in the battle against traffic congestion?

**Response N-1**

Please refer to the responses to comments F-2 and I-8. Due to an inadvertent administrative error, a copy of the Draft EIR was not sent to this commentor on August 31, 2004; however, the commentor was able to access the document and provide comments prior to the end of the Draft EIR comment period. An extension of time to submit comments would have been provided, if requested, but the commentor was able to submit his comments by the due date. The public comment period was subsequently extended to December 6, 2004 (refer to the response to comment F-2 and I-8), and the commentor submitted additional comments by the new due date. Comments on the Draft EIR were accepted as late as February, 2005.

This comment also expresses opinions regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

## **Comment N-2**

Before lowering our traffic congestion standards, San Jose should measure public opinion in an unbiased, scientifically accurate way. If the public continues to endorse reduced traffic congestion, as I believe they do, San Jose should decide to retain LOS D and rigorously enforce mitigation requirements to attain it.

### **Response N-2**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

## **Comment N-3**

The people of San Jose and Santa Clara County are willingly paying local sales taxes on top of other state and federal transportation assessments, not so that growth can continue unfettered and make things even worse, but because we want (and still believe we'll get) actual improvement in traffic flow. How will exempting any intersections move us in that direction? Is San Jose endorsing growth in the absence of mitigation? Doing so would be a violation of trust established by the people in our General Plan. It's also fiscally irresponsible.

### **Response N-3**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The modifications to the Transportation Impact (LOS) Policy that are evaluated in the Draft EIR reflect the outcome of a two-year process of planning and public outreach. During a time of slow economic growth, the City is re-evaluating the bases of past planning practices, their viability for stimulating economic recovery, the existence of new economic opportunities, and the extent to which transportation-related policies support or impede each other and related Citywide goals.

As described on page 27 of the Draft EIR, if a future development project would result in what is currently considered a significant LOS impacts to one of the protected intersections, that project would not be required to provide further vehicular capacity-enhancing improvements to that intersection. Instead, the project proponent would be required to provide improvements to other parts of the transportation system, in order to conform to the City's General Plan. However, these other improvements are not considered "mitigation" as defined by CEQA; these other improvements would not reduce or avoid the significance of the impacts to the 13 protected intersections. Rather, the other improvements would be a means of providing additional benefit to the community by improving the overall multi-modal transportation system, which the decisionmakers would consider in evaluating whether or not to approve the proposed future project. The exact improvements desired and the best locations for those improvements would be determined based on consultation with the neighborhood and businesses near each intersection, as described in Appendix A of the policy (refer to Section IV. *Revisions to the Text of the EIR* of this report). In addition, the

City is beginning a community process to create improvement master plans for the Community Improvement Zones (refer to Figure 4 in Section IV. *Revisions to the Text of the EIR* of this report) that will determine the priorities of each area.

#### **Comment N-4**

Thank you for considering my concerns. I've worked as a volunteer for thirty years to win traffic improvements (in the original sense of the word) for our city and county. I want my mobility, my quality of life, to be shared by future generations of San Joseans. Let's work to make that possible—better yet, to improve our current situation.

Strict maintenance traffic of LOS D (or better) is a critically important tool in our quality of life maintenance kit. Don't throw it away!

#### **Response N-4**

This comment also expresses opinions regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment N-5**

In 1975, San Jose's citizens insisted on imposing a measurable traffic level of service (LOS) standard in our original General Plan. This resulted from growing concerns over increases in traffic congestion and other impacts related to rapid growth. As a direct result of continuing citizen efforts, a traffic LOS D requirement also became adopted city council policy.

Simply stated, the policy requires that impacts of any project that reduces traffic level of service below LOS "D" must be mitigated. As such, our LOS standard appropriately shifts the cost of transportation improvements onto new development. In effect, it provides the city with a revenue source to pay for the infrastructure needed to support growth, thereby protecting the level of urban services for existing (and new) residents. It also gives San Jose government the ability to deny or reduce the size of projects that would violate this traffic congestion standard.

Notice that the details of how mitigation is to be achieved are not specified in either the GP or council policy. Traffic LOS D can be maintained by using public, private, or a combination of funds, and by any mode of transportation (auto, public transit, or non-motorized)—not only by widening streets or denying projects.

That is precisely what the citizens wanted when our GP was written: an objective growth management tool that the council can use to assure that quality of life did not diminish as our city approaches build-out. I believe a great majority still want this protection today, and expect our city council to provide it.

### **Response N-5**

This comment also expresses opinions regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment N-6**

Exceptions have frequently been approved by the council. Downtown and the Golden Triangle industrial areas, for example, have been designated as special development zones, wherein LOS D is either waived or based on overall averages. This means that development can go on relatively unimpeded despite traffic gridlock.

Further, the council is NOT prohibited from a finding of “overriding need” for a given project, thereby side-stepping LOS D policy. It’s policy, not law. This, in part, answers why traffic seems to keep getting worse, despite having a LOS D requirement on the books for 29 years.

In short, the council already has plenty of latitude to override policy. A critically important benefit in the existing process is that council decisions to override policy remain open to public scrutiny and case-by-case votes. That’s what San Joseans demanded in 1975.

### **Response N-6**

As stated on page 2 of the Draft EIR, the proposed Transportation Impact Policy would apply citywide, except: 1) in the Downtown Core Area, and 2) within areas where localized adopted “Area Development Policies” are in effect. The General Plan states that an “Area Development Policy” may be adopted by the City Council to establish unique traffic level of service (LOS) standards for a specific geographic area. Currently, there are three active Area Development Policies – North San José, Evergreen, and Edenvale. The Downtown Core Area is addressed in the General Plan as a unique transit hub and center of urban activities, under the General Plan policy provision that allows the Council to establish special level of service standards for a specific geographic area under certain circumstances.

The comment is incorrect. Under the existing Transportation Level of Service (LOS) Policy (Council Policy 5-3), a proposed development project (not within one of the special planning areas described above), which does not mitigate its impacts to all impacted intersections, does not conform to the LOS policy, and by definition does not conform to the City’s General Plan, and cannot be approved.

### **Comment N-7**

The sweeping change in policy now being proposed is to “protect” intersections from having to comply with traffic level of service. This distortion of terms is based upon the theory that maintaining LOS D could itself, in the extreme worst-case, be a negative impact. To buy in to the absurdity of this threat, you also have to accept one or more of these faulty, but currently held assumptions: (1) that development absolutely must occur; (2) that the council can’t say “no” to, or reduce the size of projects; (3) that the only way to mitigate traffic is to build wider streets and roads; (4) that arterial street traffic will somehow dissipate without impact via adjacent neighborhood streets; (5) that many of us will eventually just give up our cars and start using public transit; and/or

(6) that public transit or other alternatives to the automobile will NEVER suffice to reduce congestion caused by new development.

#### **Response N-7**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment N-8**

There is justifiable concern in our community that the initial thirteen “protected” intersections will grow in number. All that’s required is an environmental impact report. Although staff assures us that any future “protected” intersections will be limited to those distant from residential neighborhoods, I find no comfort in the open-ended lack of definition in their promises. In fact, none of the thirteen listed intersections in this EIR are distant enough from residential neighborhoods to avoid significant spill-over traffic impacts and local increases in air pollution when congestion is allowed to worsen. These effects of traffic from congested intersections are well-known and unacceptable to residents of San Jose neighborhoods.

#### **Response N-8**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The potential for traffic spillover to impact other intersections was evaluated on page 75 of the Draft EIR, and the air quality impacts of the additional congestion allowed by the proposed policy modifications was evaluated in Section *II.C. Air Quality* of the Draft EIR. Please also refer to the responses to comments A-1, C-2, and G-6 above.

#### **Comment N-9**

The proposed policy change also allows exemptions at other impacted intersections if traffic mitigation would mean limiting right-of-way for public transit, reducing pedestrian walks or bicycle lanes, or imposing ‘undesirable aesthetic’ changes. (Who decides?) These ill-defined criterion re-introduce the kind of subjective decision-making San Jose used in planning before 1975-and is still paying for today. Our existing policy allows objective analysis, a far superior approach that has served us quite well.

#### **Response N-9**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Some examples of undesirable aesthetic changes at these intersections, which would be discouraged under the proposed Transportation Impact Policy would be: loss of street trees, loss of park strips, loss or landscaped median islands, etc. All future development proposals would be subject to the



City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA.

#### **Comment N-10**

According to the findings of this EIR, "Implementation of the proposed policy would result in significant increases in traffic congestion (at) eight intersections during the AM peak hour and twelve intersections during the PM peak hour." That conclusion alone should seal the argument against a policy change.

#### **Response N-10**

The EIR acknowledges that, if development is allowed to proceed without expanding the vehicular capacity at certain intersections, then congestion will increase at those intersections. This is documented on pages 73-75 of the Draft EIR. The conclusion on page 77 reflects the City's understanding that there will be significant impacts from the proposed policy and the City Council would have to override those significant impacts should it approve the proposed revised policy.

#### **Comment N-11**

Contrary to claims (page vi, xi, and xii) that there will be no (or less than) significant land use impacts, the growth inducement potential of this proposal is clearly articulated in (for example) the 9/27/04 minutes of the council's Driving A Strong Economy Committee (Item 4b), which report that "Amendments to the North San Jose Area Development Policy are thus dependent upon City modification of the LOS Policy..." At stake is "...an additional 6.5 million square feet of industrial space if the new Policy is approved." Also, "...the addition of up to 24,000 new units of housing in North San Jose..." In fact, "...the North San Jose project would have to be reduced from 26.5 million square feet to 600,000 square feet in order to be consistent with the General Plan city-wide LOS Policy." I wonder how many other planned impacts are not admitted to in this EIR.

#### **Response N-11**

The modifications to the Transportation Impact (LOS) Policy [TIP] that are evaluated in the Draft EIR reflect the outcome of a two-year process of planning and public outreach. Parallel planning efforts in other parts of the City, including North San José, Downtown, Evergreen, and Coyote Valley, have been pursued for separate but similar purposes: during a time of slow economic growth, the City is re-evaluating the bases of past planning practices, their viability for stimulating economic recovery, the existence of new economic opportunities, and the extent to which transportation-related policies support or impede each other and related Citywide goals. These planning efforts are separate projects or actions subject to their own environmental review and are not covered by this EIR. They are not part of the City Council's ultimate decision on the Transportation Impact (LOS) Policy modifications.

#### **Comment N-12**

Please opt for the No Project Alternative because it "...would require future development proposals to either mitigate traffic flow impacts at these thirteen intersections or to downsize any future proposed development to result in a less than one percent traffic volume impact and less than four second critical delay increase, the No Project Alternative would reduce the significant traffic impacts at eight

of the study intersections during the AM peak hour and twelve of the study intersections during the PM peak hour...” And, “The No Project Alternative would avoid the significant traffic impacts of the project and would be environmentally superior to the project.”

San Jose can accomplish this without spending one cent-and fulfill its responsibility to the people who trust that their quality of life is being protected. Let’s accept the difficult challenge of building our city in a manner consistent with supporting infrastructure. San Jose’s innovative and resourceful people can find the way.

Changing our traffic level of service policy would, in effect, be an admission that we cannot rise to that challenge and may deny us its desirable rewards. For our sake, and the sake of future generations, please don’t do it. Retain the existing traffic level of service policy.

#### **Response N-12**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**O. RESPONSES TO COMMENTS RECEIVED FROM LOWELL GRATTAN,  
DATED OCTOBER 14, 2004 AND DECEMBER 6, 2004**

**Comment O-1**

The following letter was just received this morning and I would hope to comment on the subject. The Valley Transportation Plan 2020 page #9 reports CONGESTION AHEAD that 90,000 trips a day will not be possible to be made because of road congestion. At the present 80% of transportation funds are going for transit which provides 1.1% of passenger miles and hopes to get to 1.7% by 2020. Roads providing 95% of passenger miles are provided only 15% of transportation funds. Busses provide seven times the number of passengers as does light-rail. The valley can not provide the jobs required to fill up the 20% vacant office and industrial buildings until we have a plan for transportation. Also nationally there have been no new rail service that has had a measurable effect on traffic or pollution. The City of San Jose must express their displeasure with the operation of the Valley Transportation Authority and encourage it to provide service for the 95% using roads. Note VTA it is a Transportation agency not a Transit agency.

**Response O-1**

This comment is noted as unrelated to the proposed Transportation LOS Policy modification. The commentor's preference for funding for roadways is noted and should be directed to the VTA. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment O-2**

In 1975, San Jose's citizens insisted on imposing a measurable traffic level of service (LOS) standard in our original General Plan. This resulted from growing concerns over increases in traffic congestion and other impacts related to growth. As a direct result of continuing citizen efforts, traffic LOS D requirement also became adopted city council policy.

My concern is how mitigation is to be achieved and that the true facts of rail transportation are not being understood. We point to light-rail and BART as the future solution of all traffic problems in the Valley. Also, we point to Transit Oriented Development as another solution that will get people out of cars.

**Response O-2**

Please refer to the response to comment O-1 above.

**Comment O-3**

Here are few facts to consider.

1. A light-rail project costs up to 50 times as much as a bus system.
2. The proposed BART system will cost up to ten times as much as a light-rail system.
3. Our transportation studies are presented in trips, which would be more accurate in passenger miles.
  - A. A person taking two bus rides to work is calculated as two trips when it is only one.
  - B. Auto trips are longer and average 1.6 persons per vehicle.

4. Transit (light-rail and busses) now provide 1.1% of passenger miles while receiving 80% of transportation funds. Really Nothing. Light-rail provides approximately 1/5 of one percent of passenger miles.
5. Transit in 2020 is estimated to provide 1.7% of passenger miles. Still nothing.
6. Busses now carry seven times as many passengers as light-rail.
7. Light-rail just prior to opening its recent new line was providing 15,000 trips a day. Out and back it is 7,500 passenger [sic]. National studies report that 2/3 of rail riders has transferred from buses. The result is  $7,500 - 5,000 = 2,500$  trips are now being made in autos and so county wide approximately 2,000 autos are being taken off the road reducing road congestion and pollution an infinitesimal amount at a horrendous cost.
8. National studies report that NO new rail system has had a measurable impact on road congestion or pollution. This will apply also to BART to San Jose in that it will not reduce road congestion a measurable amount.
9. Several hundred million have been spent subsidizing TOD's which clearly are saving less than 2,000 auto trips a day. There are NO studies that residents of TOD's use their cars less.
10. Road congestion is only controlled by building more roads. Cities with more roads have less congestion.
11. VTA 2020 Plan page #9 reports 'Congestion Ahead', 90,000 trips a day will not be possible to be made.

#### **Response O-3**

Please refer to the response to comment O-1 above. The comment does not directly address the proposed Transportation LOS Policy modification.

#### **Comment O-4**

Rail transportation and TOD's has not and can not mitigation [sic] future road congestion. Changing our traffic level of service policy would, clearly be planning for a total gridlock. For the sake of the City and the Valley let's give this some more thought and retain the existing policy.

#### **Response O-4**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

**P. RESPONSES TO COMMENTS RECEIVED FROM MATT HALL, DATED  
OCTOBER 15, 2004**

**Comment P-1**

I believe that this policy change request is bad for the City of San Jose. Traffic congestion is a problem in the City of San Jose and the changes that are proposed in this policy file # PP02-07-178 will adversely affect the traffic in San Jose. Exempting intersections is a huge mistake in my view.

**Response P-1**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment P-2**

Traffic is one of the items I have a great interest in within the City of San Jose. I have joined the Traffic Appeals Commission because of this interest and therefore I am interested in ways to help improve the traffic flow in San Jose as opposed to giving up on certain certain [sic] existing or future planned intersections. I live in the Willow Glen area of San Jose and care for that area very much and because of that I am on the board of the Willow Glen Neighborhood Association.

**Response P-2**

Please refer to the response to comment P-1 above.

**Q. RESPONSES TO COMMENTS RECEIVED FROM JODY HUCKO AND SCOTT  
MACDONALD, DATED DECEMBER 6, 2004**

**Comment Q-1**

We have read with alarm about the proposal to change the city's traffic LOS policy to, in effect, "give up" on the abysmal traffic situation at thirteen of our busiest intersections, five of which are in our home District 6. We regularly travel through three of them (The Alameda at Hedding, Meridian at West San Carlos and Stevens Creek at Winchester) and cannot imagine the traffic at peak hours getting worse, or that anyone in city government would consider their current state to be acceptable.

**Response Q-1**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment Q-2**

The existing LOS policy was written almost thirty years ago. It provides thoughtful and objective standards for determining what is and is not acceptable at our intersections and a means for shifting the cost of transportation improvements onto new development. City Council has the flexibility to find "overriding need" for specified projects, where meeting the LOS D standard is not possible or desirable in a particular instance. Changing the policy to "protect" certain intersections from ever having to meet LOS D opens the door to thoughtless development with wishful thinking that nothing much is going to happen, traffic-wise, or that if it does, it's OK.

**Response Q-2**

The comment is incorrect. Under the existing Transportation Level of Service (LOS) Policy (Council Policy 5-3), a proposed development project (not within one of the special planning areas described on page 2 of the Draft EIR), which does not mitigate its impacts to all impacted intersections, does not conform to the LOS policy, and by definition does not conform to the City's General Plan, and cannot be approved.

This comment also expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment Q-3**

IT'S NOT OK!!! We urge the Planning Commission to opt for the No Project Alternative, which requires future development proposals to either mitigate traffic flow impacts at these thirteen intersections or to downsize any future proposed developments to result in specified, minor traffic impacts. As taxpayers, we expect our city government to protect our quality of life, not to legislate or create policy that pretends problems -- or viable solutions to them -- don't exist.

### **Response Q-3**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**R. RESPONSES TO COMMENTS RECEIVED FROM DAVE LANDIS, DATED  
DECEMBER 1, 2004 AND DECEMBER 6, 2004**

**Comment R-1**

I recently read an article in the Berryessa Sun regarding developer's fees and mitigation agreements for all the high density housing being approved along Capitol and Penetencia [sic]/Berryessa Roads. The article quotes you as saying there is really no place for developers to add turn lanes or road improvements since it has all been built up due to the Light Rail. It also states that the city is considering possible [sic] charging the developers some other type of fee in lieu of traffic mitigation. I am unable to make it to the planning meeting on the 2nd, but would like to send my input to you.

First, I am a member of the Summerdale Elementary School Site Council, and want to pass on the concerns of the school to you here. Summerdale is already over capacity at 450 students, when it was designed for 350. The existing traffic in and out of Summerdale is already very difficult. It backs up onto Penetencia [sic] and out onto Berryessa when parents are dropping off and picking up their children. Continued increases of high density housing will make the population of the school rise even more and increase this congestion further. Although Summerdale can continue to add portable classroom buildings, it cannot expand it's playground, it's bathrooms, it's staff facilities, it's cafeteria, it's office, or it's parking lot - all of which are already maxed out due to overcrowding. The same is true of Piedmont middle school.

**Response R-1**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. As described on page 22 of the Draft EIR, this EIR evaluates the physical environmental effects which could occur with implementation of the proposed Transportation Impact (LOS) Policy. However, it should be noted that no physical development, particularly residential development, is proposed as part of this project. Project-specific environmental review will be completed for any future development proposals, and in the case of residential development proposals, will evaluate potential impacts upon school facilities and services. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment R-2**

I invite anyone to try and navigate Summerdale Drive or Piedmont Road near Berryessa at 8:15 in the morning or 2:30 in the afternoon. They will sit in cycle after cycle of lights in a row of cars. Adding more students and more traffic due to the additional housing is a very bad idea. A lack of planning regarding how all of this development will impact neighborhood schools is not in this areas [sic] interest. In addition, a lack of improvements to the roads will only increase the existing congestion and traffic. People will increase their use of back streets through our neighborhoods in an attempt to avoid all the clogged up intersection. This is unsafe for our children and has a very negative impact on the school site itself.



## **Response R-2**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The EIR acknowledges that, if development is allowed to proceed without expanding the capacity at certain intersections, then congestion will increase at those intersections. This is documented on pages 73-75 of the Draft EIR. The conclusion on page 77 reflects the City's understanding that there will be significant impacts from the proposed policy.

The TIA prepared for the EIR evaluated the effects of the proposed Transportation Impact Policy on other intersections, particularly those near the designated "Protected" intersections. A discussion of the potential for travelers to seek alternative routes and increase congestion at other intersections is provided on page 75 of the Draft EIR. As stated on page 75:

*"With the proposed policy modification, traffic congestion at other intersection throughout the City would also incrementally increase. However, the project would not cause the LOS to drop below acceptable levels at any of the other intersections during the AM or PM peak hour, unless those intersections become Protected intersections by approval of the City Council, which is too speculative to identify at this point."*

All future development proposals would be subject to the City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

## **Comment R-3**

The neighboring services such as grocery stores and gas stations are also impacted. I was in Safeway on the Monday evening before Thanksgiving, and granted, that is usually a high volume time for shopping. However, there was no place to park in the existing parking lot. I had to wait for someone to leave. It took me 45 minutes to get checked out of the store. It was so crowded the line for checkout went around the back of the store. Adding more people and their cars to the mix will make these types of neighborhood services even more difficult to access as well.

## **Response R-3**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment R-4**

I would prefer there be some sort of study of the area done by those who are knowledgeable concerning road and traffic improvements. There may be a number of ways to reduce the congestion on Capitol that you are not aware of. Developer's fees should first go to improving the congestion that will be created on Capitol and the involved intersections. If there cannot be assurances that our neighborhood will have proper support with the traffic that development brings, then as our representative, I ask that you stop supporting any type of high density housing.

#### **Response R-4**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment R-5**

You told me previously that with Light Rail there were agreements regarding high density housing. I have lived in my home since 1986, when it was built. My neighbors and I did not move into a relatively quiet area with the idea that there would be such massive congestion on side streets and in the main intersections with the advent of Light Rail – which is ....

**NOTE: The remainder of this comment letter was missing.**

#### **Response R-5**

This comment is noted. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment R-6**

I am not in favor of changing the Level of Service policy. I live in the Berryessa region of San Jose and the proposal to lower/remove the LOS at four intersections will 1) Vastly increase traffic congestion along Capitol Avenue.

#### **Response R-6**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Section II.B. *Traffic, Transportation and Circulation* of the Draft EIR acknowledges that traffic congestion along Capitol Avenue would increase with adoption of the proposed Transportation Impact Policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment R-7**

2) Create overflows of congestion from Berryessa and McKee onto highway 680. This is already the case many times on McKee, Jackson, and Capitol Express Way exits and will only get worse if this plan is passed. I don't like the idea of 680 becoming a parking lot at [sic] during rush hour.

### **Response R-7**

Please refer to the response to comment R-6 above. Any future development projects will be required to analyze potential impacts upon freeways and ramps, consistent with the requirements of the City of San José and Congestion Management Program (CMP) guidelines and policies.

### **Comment R-8**

3) Impact Emergency services. A traffic light override won't be of much use if Capitol Avenue is too crowded for fire engines, ambulances, and police cars to get through jams.

### **Response R-8**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The secondary impacts of the proposed policy modification project are evaluated in Section III. *Secondary Impacts of the Project* of the Draft EIR. As described on page 89 of the Draft EIR, the project could allow new development to occur within San José in the future, and this development could result in significant environmental impacts. The City cannot predict with any certainty what development proposals will be made, at what level of intensity, or at what point in time. Because the CEQA Guidelines (Section 15145) discourage speculation about environmental impacts in EIRs, these possible secondary impact areas are identified, but are not discussed in explicit detail. All future development proposals would be subject to the City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA.

The Draft EIR acknowledges that future development projects may have significant impacts, including impacts to public services (such as police and fire/emergency services). As stated on page 90 of the Draft EIR:

*“These 13 intersections will experience increased congestion as a result of the planned infill development in their vicinity. Without the proposed policy change, future development that results in an LOS impact at one or more of these 13 intersections would currently be required to either modify the intersection or downsize the project until no significant LOS impacts occur. Therefore, under the existing policy, either these intersections could have to be further expanded, or some amount of development that is otherwise planned for and allowed under the existing General Plan would not be approved.”*

*It cannot be determined what amount of future development would be affected, or at what locations these increments of development might occur. Since future development projects are assumed to primarily be on infill sites within the City's urban area, it is unlikely that these increments of development (i.e., the additional amount of development that would make the difference between a significant and a less than significant LOS impact at one of the 13 intersections) would by themselves result in significant impacts. The development projects themselves, depending on their location, may have significant impacts related to cultural resources, visual change, geology and soils, loss of mature trees, increased energy consumption, impacts upon utilities or public services, or other impacts found within the urban envelope. The amount of development they could be required to downsize (or reduce) due to LOS impacts at the 13 intersections may or may not be a significant factor in those impacts."*

In addition, page 38 of the Initial Study in Appendix A of the Draft EIR states: "Increased traffic and congestion at these eleven (now 13) intersections could slightly impact fire and police service to these areas by increasing the travel times required to traverse these intersections during peak hours."

#### **Comment R-9**

4) Congestion will make us less productive and give us more time in our cars. Light Rail is Expensive and doesn't take most people where they need to go in a time efficient manner. Creating a situation with high density housing will not increase Light Rail ridership as much as it will increase congestion.

#### **Response R-9**

This comment expresses an opinion regarding the proposed policy modification project and the relationship between housing and transit. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Section II.B. *Traffic, Transportation and Circulation* of the Draft EIR acknowledges that traffic congestion along Capitol Avenue would increase with adoption of the proposed Transportation Impact Policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment R-10**

5) Reduce property values. If the Berryessa region becomes overly congested, people won't want to live there and will look for less congested areas.

#### **Response R-10**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment R-11**

6) Create more crowding for neighborhood services. The local neighborhood services such as groceries and elementary schools will be impacted since this plan attempts to crowd more people into a small area. Summerdale Elementary and other school traffic is already very much intolerable for people in my neighborhood. Our local Safeway parking lot is a virtual sardine can on weekends.

The overflow effect of this proposal will make living in the Berryessa region very unpleasant. Please do not recommend reducing LOS to the City Council.

### **Response R-11**

This comment expresses an opinion regarding the proposed policy modification project. The EIR addresses environmental impacts, not a project's potential impact on property values. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Section *II.B. Traffic, Transportation and Circulation* of the Draft EIR acknowledges that traffic congestion along Capitol Avenue would increase with adoption of the proposed Transportation Impact Policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**S. RESPONSES TO COMMENTS RECEIVED FROM MARGUERITE LEE, DATED  
DECEMBER 6, 2004**

**Comment S-1**

I am a resident of San Jose living at 598 North Henry Avenue, right around the corner of the Stevens Creek/Winchester Avenue intersection. I have been living in the area for almost seven years now and have seen Town and Country get replaced by Santana Row. I have also seen Valley Fair almost quadruple in size. The intersection at Stevens Creek and Winchester Avenue is absolutely horrible already. Often times during the day, I have had to wait two traffic signals to proceed. To even consider impacting that intersection any further should be immediately dismissed.

**Response S-1**

This comment is noted. The City Council will evaluate the information presented in this comment, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment S-2**

As for the EIR, here are my comments that I would appreciate your feedback on:

Page 29: “The goals and policies together seek to provide a safe, efficient, and environmentally sensitive multimodal transportation system for the movement of people and goods.”

Comments: The area is already over trafficked and almost impossible for a pedestrian to navigate. Stevens Creek has almost flattened me as I was crossing due to its width and the speed at which cars travel. Santa Clara is proposing add hundreds of new housing units to an already congested area. This will make things worse not better.

**Response S-2**

This comment expresses an opinion regarding existing and future traffic conditions. The commentor’s example illustrates the intent of the proposed Transportation Impact (LOS) Policy [TIP] project. Under the current LOS Policy, if a future development project in the area of the Stevens Creek Boulevard/South Winchester Boulevard intersection would result in significant traffic LOS impacts to that intersection, the project would be required to provide additional vehicular capacity (i.e., by widening the intersection). Widening this intersection would further reduce the ability for pedestrians to cross safely and could increase vehicle travel speeds.

Under the proposed TIP policy, a future development project that would result in significant traffic impacts at this intersection would not be required to provide additional vehicular capacity. Rather, a future project would be required to provide other system-wide roadway improvements or other non-auto improvements, such as adding bicycle lanes or improving pedestrian access near the intersection to facilitate the use of other modes of transportation. The exact improvements desired and the best locations for those improvements would be determined based on consultation with the neighborhood and businesses near each intersection, as described in Appendix A of the policy (refer to Section IV. *Revisions to the Text of the EIR* of this report). In addition, the City is beginning a community process to

create improvement master plans for the Community Improvement Zones (refer to Figure 4 in Section IV. *Revisions to the Text of the EIR* of this report) that will determine the priorities of each area.

Section II.B. *Traffic, Transportation and Circulation* of the Draft EIR acknowledges that the proposed project would worsen traffic congestion in the vicinity of these Protected intersections.

### **Comment S-3**

Page 54: “The proposed creation of “Protected” intersections would allow additional development in the City to be approved which would result in increased vehicular traffic and congestion within these intersections.”

Comments: By protecting a [sic] intersection, you are basically killing it. The only thing you are protecting is the developer that wants to increase capacity in the area. The BAREC development projects would make the LOS at Stevens Creek and Winchester an F or worse.

### **Response S-3**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The term “Protected” is used to convey that the intersection’s overall scale and geometry would remain fairly constant. This term is also meant to convey that the land uses adjacent to these intersections would be protected from right-of-way taking as a result of future vehicular traffic improvements and mitigation requirements.

### **Comment S-4**

Also,

1. “The proposed policy modifications would not significantly impact adjacent land uses.”

Comments: Untrue. What about the huge BAREC development plan. How can you state this? The fact that Valley Fair continues to grow and Santana Row continues to grow shows that the traffic will continue to increase. This is a false statement.

### **Response S-4**

Section II.A. *Land Use* of the Draft EIR evaluates the potential for the Transportation Impact (LOS) Policy project to physically impact the land uses near each of the intersections, in accordance with the thresholds of significance in the CEQA Guidelines and the City’s requirements. As stated on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy” which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City’s transportation system, particularly the adopted General Plan Traffic LOS Policy. The proposed Transportation Impact Policy change does not include any changes to the existing land uses near the 13 intersections, and therefore, would not result in physical land use impacts.

However, by allowing traffic conditions to worsen at the study intersections, the project would indirectly allow for the approval of additional development in the vicinity of these intersections. The traffic and circulation impacts which are likely to result from this proposed policy change are evaluated in Section II.B. *Traffic, Transportation and Circulation* and Appendix C of the EIR.

As mentioned directly above, the proposed project does not include any physical development. The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José's Transportation Impact Policy. The BAREC project is subject to its own environmental review, and development of that project is not covered by this EIR. (However, the long-term cumulative scenario in the EIR accounts for future pending developments within and near the City of San José, such as the BAREC project.) Approval of the proposed Transportation Impact (LOS) Policy modifications project would not mean approval of the BAREC project in Santa Clara. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

#### **Comment S-5**

2. "It would not physically divide an established community or result in the loss of open space or agriculture land."

Comments: False again. It would basically cut the community apart, separating the north of Stevens Creek from the southern half of Stevens Creek.

#### **Response S-5**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the responses to comments S-2 through S-4 above.

The comment illustrates the intent of the proposed Transportation Impact (LOS) Policy project. Under the current LOS Policy, if a future development project in the area of the Protected intersection would result in significant traffic LOS impacts to that intersection, the project would be required to provide additional vehicular capacity (i.e., by widening the intersection). Widening these intersections would further divide neighborhoods and reduce the ability for pedestrians to cross safely. The term "Protected" is used to convey that the overall scale and geometry of these intersections would remain fairly constant. This term is also meant to convey that the other transportation modes (sidewalks, transit stops, and bicycle lanes) and land uses adjacent to these intersections would be protected from impacts as a result of future vehicular traffic improvements and mitigation requirements.

#### **Comment S-6**

3. The proposed policy "would not directly result in significant impacts to any existing land use."

Comments: See above. It is already a problem. You are basically throwing the intersection of Stevens Creek and Winchester under the bus so to speak. You are basically executing the intersection, making it unacceptable for both pedestrians and automobiles. If you keep the laws as



they are pertaining to this intersection, Santa Clara could not turn BAREC into a enormous housing plan.

### **Response S-6**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the response to comment S-4 above.

The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José's Transportation Impact Policy. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

### **Comment S-7**

Page 24: "Examples of unacceptable impacts would include encouraging substantial neighborhood cut through traffic."

Comments: This is already happening with Santana Row and the problem would be increased with what they are proposing. I have been working at home for the past two years on a pretty regular basis (even more so in the past year), and I see a large number of cars 'cutting through' Henry Avenue/North Henry Avenue in order to get around the Winchester traffic backup.

### **Response S-7**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the responses to comments S-1 and S-2 above.

The TIA prepared for the EIR evaluated the effects of the proposed Transportation Impact Policy on other intersections, particularly those near the designated "Protected" intersections. A discussion of the potential for travelers to seek alternative routes and increase congestion at other intersections is provided on page 75 of the Draft EIR. As stated on page 75:

*"With the proposed policy modification, traffic congestion at other intersection throughout the City would also incrementally increase. However, the project would not cause the LOS to drop below acceptable levels at any of the other intersections during the AM or PM peak hour, unless those intersections become Protected intersections by approval of the City Council, which is too speculative to identify at this point."*

All future development proposals would be subject to the City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

### **Comment S-8**

You say that this EIR will “guide and influence future development” and that it will “encourage multi-modal transportation facilities” and that the old LOS Policy will not. This is not a good assumption and is only an excuse to make it easier for developers to build higher densities. The amount of money the developers would pay hardly covers the changes that will be required at the intersections.

Do not allow for these protected intersections to exist [sic]. Specifically, do not allow the Winchester/Stevens Creek intersection to suffer any more than it already does. If exceptions need to be made, let the developers go in front of the City Council and the citizens, in public, and let their case be heard. The council always has the power to make exception on a case by case basis. Do not sacrifice this ability and give the developers the ability to circumvent the existing policies. Do not turn my neighborhood into a commercial zone for traffic.

### **Response S-8**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**T. RESPONSES TO COMMENTS RECEIVED FROM KATHRYN MATHEWSON,  
DATED DECEMBER 6, 2004**

**Comment T-1**

This is a very important change in the direction of the entire City of San Jose and should have had much more serious public discourse and input. It is unfortunate that the citizens of San Jose were not given the legal amount of time and notice to respond to this EIR and also that we were not involved in helping contribute information before it was written. We should have known that it was being written and we should have been given 45 days to respond. However, since we were not, I am quickly throwing together my thoughts about this very poorly documented EIR. There are many more inaccurate statements but I am giving you an example.

**Response T-1**

Please refer to the responses to comments F-2 and I-8.

**Comment T-2**

Following are some quotes from the EIR that are not accurate:

Pg 54: "The proposed creation of 'Protected' intersections would allow additional development in the City to be approved which would result in increased vehicular traffic and congestion within these intersections." This is not a good thing for the Winchester and Stevens Creek intersection for the following reason:

Since nearby Santa [sic] Row was built, there is already too much back-up traffic around Winchester and Stevens Creek and on the adjacent freeway exit and entrances. On Holidays, around Christmas, and weekends there is so much back-up traffic in this area that drivers are exiting early and driving through the neighborhoods to get to their destination or driving through the neighborhoods to get to a distant freeway entrance.

**Response T-2**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR. Please also refer to responses to comments B-1, C-4 and S-7.

**Comment T-3**

On page 24 the EIR states: "Examples of unacceptable impacts would include encouraging substantial neighborhood cut through traffic." If this EIR is approved as it is written, the traffic problem in the neighborhoods will only get worse. You need to correct the problems in this area before you add more density, more traffic, more development and certainly before you approve this EIR change. If you do not, you are clearly not following the basic premise of the EIR.

### **Response T-3**

As described on page iv of the Preface to the Draft EIR and in Section 15121(a) of the CEQA Guidelines, an EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect(s) of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR, along with other information which may be presented to the agency, prior to making a decision on the project (in this case, the proposed Transportation Impact Policy modifications).

In accordance with the CEQA Guidelines, the EIR identifies the significant environmental effects of the project, identifies possible ways to minimize the significant effects, and describes reasonable alternatives to the project. The City Council will evaluate the information presented in the EIR, prior to deciding whether to approve the proposed policy modification.

The discussion on page 24 of the Draft EIR lists the types of impacts which often result from vehicular traffic mitigation requirements under the existing LOS Policy. Under the proposed Transportation Impact (LOS) Policy policy, such impacts to pedestrian, bicycle, and transit circulation, as well as impacts to neighborhood circulation, would be considered unacceptable and would not be allowed as a part of vehicular LOS improvements.

Please also refer to responses to comments B-1, C-4 and S-7.

### **Comment T-4**

The following are totally not true from Pg 54. Since I am most familiar with the “Protected” Intersection of Stevens Creek and Winchester and live near it, I will make my comments about this intersection. I am certain similar comments could be made about most of your “Protected” intersections.

1. “The proposed policy modifications would not significantly impact adjacent land uses.”
2. “It would not physically divide an established community or result in the loss of open space or agriculture land.”
3. The proposed policy “would not directly result in significant impacts to any existing land use.”

FACT: The above statements from Modifications to Sand [sic] Jose’s Transportation Policy EIR are true. If this “modification” is approved our most historical piece of agriculture land on the California’s Central Coast would turn into housing and we would lose our history. This 17-acre parcel of land is just one block from Stevens Creek and Winchester and couple of thousand of new residents at BAREC (UC Agriculture/Horticulture Research Center) will exit from the a [sic] Santa Clara development onto a San Jose street (Winchester) and cause chaos on San Jose streets. We would lose 17 acres of valuable open space and agricultural land and this part of the Valley is missing open space (as per San Jose Parks Commissioners at their meetings) to meet San Jose open space quotas. This district is the only district of five that does not have a county park. I am not talking about bike/path trails along creeks but about real large pieces of open space land. You are not coordinating this proposal with the open space needs of the community. You are also taking agriculturally zoned land from the community by allowing this “modification” to go through.

#### **Response T-4**

Section II.A. *Land Use* of the Draft EIR evaluates the potential for the project to physically impact the land uses near each of the intersections, in accordance with the thresholds of significance in Appendix G of the CEQA Guidelines and the City’s requirements. As stated on page 22 of the Draft EIR, the project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy” which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City’s transportation system, particularly the adopted General Plan Traffic LOS Policy. No physical development or construction is proposed as part of this project. The proposed Transportation Impact Policy change does not include any changes to the existing land uses near the 13 intersections, and therefore, would not result in physical land use impacts.

However, as stated throughout the Draft EIR, by allowing traffic conditions to worsen at the study intersections, the project would indirectly allow for the approval of additional development in the vicinity of these intersections. The physical environmental impacts which are likely to result from this proposed policy change are evaluated in Section II. *Environmental Setting, Impacts and Mitigation Measures*, of the EIR. This section of the Draft EIR specifically addresses the land use, traffic and circulation, air quality, and noise impacts associated with the increased congestion that would be allowed near these intersections if the proposed Transportation Impact (LOS) Policy [TIP] is adopted. In addition, the secondary impacts associated with implementation of the proposed TIP are also evaluated, in Section III. *Secondary Impacts of the Project*, to the extent they can be predicted at this time, in accordance with the CEQA Guidelines.

As mentioned at the beginning of this response and in the responses to comments S-4 through S-6 above, the proposed project does not include any physical development. The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José’s Transportation Impact Policy. The BAREC project is subject to its own environmental review, and development of that project is not covered by this EIR. (However, the long-term

cumulative scenario in the EIR accounts for future pending developments within and near the City of San José, such as the BAREC project.) Approval of the proposed Transportation Impact (LOS) Policy modifications project would not mean approval of the BAREC project in Santa Clara.

#### **Comment T-5**

The entrances and exits onto the freeway in this area are very confusing and poorly coordinated for the existing dense commercial and residential community here. Some of the problems that need to be addressed before allowing any land use changes in this area are:

1. The boundaries between San Jose and Santa Clara in this area are very irregular and confusing. For example: one-half of Macy's is in San Jose and one-half is in Santa Clara. Also, BAREC is bounded on two sides by Santa Clara and two sides by San Jose and is in the city of Santa Clara. However, all the residences around BAREC have San Jose addresses and BAREC has always had a San Jose address. Any development at BAREC will exit onto San Jose streets and San Jose will be responsible forever for the traffic problems created by a Santa Clara development and get no long-term revenue for it. Santa Clara, however, will get permanent revenue from the tax revenue of the property.

#### **Response T-5**

This comment expresses an opinion regarding the proposed policy modification project and the BAREC project proposed in Santa Clara. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

As described above, no physical development or land use changes are proposed as part of the Transportation Impact (LOS) Policy project. Please refer to the responses to comments T-2 and T-4 above. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment T-6**

2. Nearby freeway exits/entrances are poorly coordinated: (1) Winchester has an exit and entrance that only goes one direction; (2) San Thomas [sic] and Lawrence Expressways should have easy exits and entrances onto #280 and have nothing; instead the exit is at Saratoga Avenue which puts you into another major traffic nightmare; (3) Leigh/Bascom Avenue is an exit/entrance from #280 and is very dangerous in that the traffic line-up for Valley Fair/Santana Row blocks the entrance and one needs to cross over four lanes to go north; also going south immediately after #280 if you want to exit onto Leigh/Bascom one needs to cross over two lanes one of which is high speed from #880 and this is very dangerous; (4) The #280 and #880 intersection is confusing with poor signage probably because it is confusing; it is also badly backed up with traffic.

#### **Response T-6**

This comment expresses an opinion regarding existing traffic conditions. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The Traffic Impact Analysis (TIA) in the EIR analyzes the proposed policy change and the intersections affected by the policy change. The potential for traffic overflow to impact other intersections was also evaluated. The discussion on page 75 of the Draft EIR states that increased congestion at the proposed 13 Protected intersections could result in some drivers in the future using routes different than routes involving one or another of the 13 intersections. The precise route or routes that might be used instead cannot be determined in the absence of a specific project and/or a more precise time frame. As for other intersections, there may be incremental increases in traffic on freeway segments or ramp intersections than would otherwise occur, but those increases are impossible to predict in the absence of specific development proposals. To try to analyze the ramp intersections identified in this comment would require a high degree of speculation, which would not be meaningful.

Future development projects will be evaluated for potential impacts upon freeways and ramps, consistent with requirements of CEQA and the City of San José and Congestion Management Program (CMP) guidelines and policies.

#### **Comment T-7**

3. If the State wants to place development in this area than they better clean up the freeway mess they have created for us before they are allowed to build anything more.

#### **Response T-7**

This comment expresses an opinion regarding existing freeway traffic conditions and the BAREC project in Santa Clara on State-owned land. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

#### **Comment T-8**

4. This EIR should be stating such things and have more such details submitted to them by the community before it was even written not after. It is a waste of taxpayer money to spend so much public money writing an EIR and not getting the community's input first.

#### **Response T-8**

Please refer to the responses to comments T-1 and T-3 above.

#### **Comment T-9**

The EIR states that this Policy will “guide and influence future development” and that it will “encourage multi-modal transportation facilities” and that the old LOS Policy will not. This is not a clear and appropriate assumption. Following are some of the reasons:

1. There is no reason why the LOS Policy cannot also consider multi-modal transportation.
2. Your assumption is that the community wants new transportation improvements but you did not ask us if we would like them. Most of us would rather not have such neighborhood improvements if it meant more traffic at major intersections near where we live.
3. Your light rail system is very expensive, not working with the bus system, and does not have [sic] appear to have enough riders to pay for it. When you build a light rail system you are removing

the more valuable bus system that has more flexibility as to where it goes. The San Carlos/Stevens Creek bus system is absolutely wonderful. My family has been using it since 1950. It was vital when my senior parents needed help as they aged because the only people that would help them used this bus system. This kept their public and Medicare health care costs down reducing our taxes. I would hate to see this bus system disappear for your “multi-modal” system and a new light rail system.

4. Your public transportation system is not working with the open space system. Since more than one-half of the Valley’s population is “of color” and since they mostly use public transportation, they are not using our county parks and instead our [sic] using our old neighborhood parks. This increases traffic and parking in my Rose Garden neighborhood.

5. You talk about saving street trees so people can walk (a multi-modal system) but then within the past few years you removed the Jacaranda Shade trees on San Carlos and added Palm Trees with lights (when the trees get 120 feet tall the lights will only light the narrow trunks...a total waste of money) so that drivers not walkers will have a more grand experience. This street should have shade trees not Palm Trees so people can walk on this glary, dusty, and hot street. On nearby Meridian Street within the last year you approved a new development to be built only a few feet from the sidewalk and then approved a Sycamore Tree in front of it. This Sycamore has a canopy of 50 feet and it will not be able to grow here because you allowed the developer to build too close to the street. How can we trust you when you say you care about street trees and have as your new goal “environmental sensitivity” (page 24) with these kinds of cross agency mistakes? If you are making such mistakes with the old LOS Policy, what new and worse mistakes will you be making?

6. It appears that this new Policy change is an excuse to make it easier for developers to build higher densities wherever they want and is not a way to improve the quality of life for the citizens who currently live in San Jose.

#### **Response T-9**

This comment expresses opinions regarding the proposed policy modification project, transit services, and streetscape improvements on San Carlos/Stevens Creek. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

No further response is required as this comment does not raise any questions about the adequacy of the EIR. It should be noted that the proposed Transportation Impact (LOS) Policy project does not propose any changes to existing transit facilities or services.

#### **Comment T-10**

Following are some quotes directly from the Draft EIR that I believe are inaccurate:

Pg 29: “The goals and policies together seek to provide a safe, efficient, and environmentally sensitive multimodal transportation system for the movement of people and goods.”

FACT: San Jose is one of the major metropolises that still use diesel fuel for its public transportation. Almost all major cities have gone to hydrogen buses because they have less BTUs, lower carbons, and pollute less. San Jose appears to be getting poor advice on such environmental transportation issues. This EIR is full of similar environmental problems.



### **Response T-10**

This comment expresses opinions regarding the proposed policy modification project and transit services. Please refer to the responses to comments T-3, T-4 and T-9 above. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

It should be noted that the Santa Clara Valley Transportation Authority (VTA) owns and operates the bus fleet. The VTA decides how and when to update its bus fleet and is the appropriate agency to address the issue of diesel emissions from buses. This issue is not the subject of this EIR.

### **Comment T-11**

The amount of money the developers would pay hardly covers the changes that will be required at the intersections and in the larger neighborhood. The cost changes will be massive especially considering some of the ones I have already mentioned. Staff time and coordination of agencies will increase but our budget will not. Who will pay for all this? You have not even begun to do some costing analysis in this EIR Report and you should. Also, the 13 “Protected” intersections can too easily change into all intersections by a vote of the City Council and, since you failed to notify the community’s about this important EIR both before you began it and after it was completed, how can we trust you to notify the community of such changes to future intersections?

I believe you need to do a better job at your current job before the citizens can trust you with such a massive change in our transportation system. Much more work and details need to be studied and discussed before this EIR should become a public policy.

### **Response T-11**

This comment expresses opinions regarding the proposed policy modification project. Please refer to the responses to comments F-2, I-8, T-1 through T-4, and T-9 above.

As stated on pages 26 and 29 of the Draft EIR, adding other intersections to the list of Protected intersections would constitute a proposed revision to Council Policy, and therefore, would be subject to approval by the City Council. All future modifications to the City Council’s adopted Transportation Impact Policy (including additions to the list of Protected intersections) would be subject to public review and further CEQA analysis/environmental review, in conformance with State law and the City’s own regulations, policies and procedures.

As described on page iv of the Preface to the Draft EIR and in Section 15121(a) of the CEQA Guidelines, an EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect(s) of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. A “costing analysis” is not appropriate in an EIR.

**U. RESPONSES TO COMMENTS RECEIVED FROM DAVID NOEL,  
DATED OCTOBER 14, 2004**

**Comment U-1**

I strongly urge you not to adopt any changes to San José's Transportation Impact Policy that would promote gridlock on our roads. The purpose of San José's Transportation Impact Policy is to preserve our transportation infrastructure (i.e. quality of life) when allowing growth. Proposed developments should [sic] allowed only if and when our infrastructure can support them. The costs of transportation impact mitigation should be fairly allocated to all projects that create those impacts. Further, transportation impact mitigation should be in place before or concurrent with completion of developments that create the impacts.

**Response U-1**

This comment is noted and expresses opinions regarding the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment U-2**

It is preposterous to knowingly create new traffic problems without concurrently implementing solutions. Allowing our automobile transportation infrastructure (or any other infrastructure) to degrade to unacceptable levels is bad policy and defies common sense. It causes future generations to bear the costs today's developments, not just in terms of dollars to fix the problems, but in degraded quality of life.

**Response U-2**

Please refer to the response to comment U-1 above.

**Comment U-3**

I believe the, automobile will continue to be the transportation mode of choice, especially as automobile efficiencies improve (e.g. hybrids). Meanwhile, bus routes can most efficiently meet our evolving public transportation needs, especially by virtue of their flexible routing. A good road system will accommodate both our automobiles and busses, and meet our transportation needs at far lower cost than fixed rail.

**Response U-3**

Please refer to the response to comment U-1 above.

#### **Comment U-4**

In 1975, San Jose established the existing Transportation Impact Policy for good reasons. Those reasons are ever more valid today. The existing policy should be enforced, not relaxed.

It's no surprise that the "Roadshow" column in the San Jose Mercury News became so wildly popular that it quickly evolved from a weekly column to a daily column. Roads are the number one concern of our residents and voters. Please don't let us down!

In closing, I hereby formally request that I be included in all future public outreach regarding proposed changes to the Transportation Impact Policy.

#### **Response U-4**

This comment is noted and expresses opinions regarding the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. As requested, the commentor will be included in future outreach regarding the proposed LOS Policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**V. RESPONSES TO COMMENTS RECEIVED FROM YOLANDA REYNOLDS,  
DATED OCTOBER 14, 2004 AND DECEMBER 6, 2004**

**Comment V-1**

I just received notice that there is a desire to abolish or reduce the level of service “D” policy for the City of San José. I am ADAMANTLY OPPOSED TO SUCH A CHANGE IN THE CITY’S LOS D.

There are many reasons for my opposition among them are:

The increased pollution caused by vehicles stalled at congested intersections.

The subsequent high density development that would occur and would ultimately deprive San José of space for trees and vegetation. Large healthy trees are essential as a way to help purify the air in our neighborhoods.

Our political leaders always state that they wish to enhance the “Quality of Life” for the residents of this city – well this will greatly diminish not only the ease of travel in the city but it will destroy neighborhoods, business, people’s health, clean air and a view of the surrounding mountains of this exquisite valley.

**Response V-1**

This comment is noted and expresses opinions regarding the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. The increase in air pollution likely to result from this proposed policy change is evaluated in Section *II.C. Air Quality* of the Draft EIR.

The project seeks to preserve street trees, not remove them, as the comment suggests, and as can happen under the existing policy when capacity-enhancing improvements are needed to mitigate a project’s LOS impacts. There is no proposed development of high density housing as part of the proposed policy. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment V-2**

I do get around this city, speak to many folks and I know of no one who would agree that reducing the already low level standard that we have is appropriate. In fact, I think that to do so will cause a real backlash.

**Response V-2**

This comment also expresses an opinion regarding the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. The increase in air pollution likely to result from this proposed policy change is evaluated in Section *II.C. Air Quality* of the Draft EIR. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Comment V-3**

Some people believe that mass transit, BART and the Light rail will become the alternative but fixed rails are not the answer.

### **Response V-3**

Please refer to the response to comment V-2 above.

### **Comment V-4**

The rush for more housing is inflated since there are many vacant apartments and vacant rentals. I hear all the time that housing for seniors is lacking but people are leaving the area when they can as much for the congestion as for the high prices. High density housing has many flaws-not the least of which is the density as well as the shoddy construction that has resulted in law suit after law suit. One need only look at the blogs created by disgruntled buyers of such housing.

### **Response V-4**

This comment is noted and expresses opinions regarding traffic congestion and housing development. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment V-5**

I and my husband enjoy walking, even to get groceries and other shopping however, increasing the congestion we already have will take away that pleasure and mode of exercise.

### **Response V-5**

This comment is noted and expresses opinions regarding traffic congestion. The proposed policy is intended to protect and enhance non-auto modes of travel including walking. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment V-6**

Already the quality of the air in the city is often severely compromised do not add to that problem by allowing and in fact encouraging more air pollution.

DO NOT ELEMİNATE [sic] LEVEL OF SERVICE “D” for the city of San José

### **Response V-6**

This comment is noted and expresses opinions regarding the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. The increase in air pollution likely to result from this proposed policy change is evaluated in Section II.C. *Air Quality* of the Draft EIR. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

## **Comment V-7**

### **1. Division of Neighborhoods**

On page 32 of the Draft Environmental Impact Report it is stated, “By limiting the extent to which traffic improvements proposed to increase vehicular capacity traffic can eliminate or restrict other modes of transportation, including bicycle and pedestrian facilities, the policy modifications may reduce adverse impacts on multimode access within neighborhoods.” It goes on to state that such a configuration will reduce the “likelihood of creating broad intersections that divide neighborhoods”.

*This notion applied to the Winchester/Stevens Creek intersection will further congest and thus divide the neighborhoods in that area. Already it is a dangerous area for pedestrians and adding fixed rail or dedicated lane [sic] for mass transit will spread this existing traffic to adjoining streets or streets that access that very popular shopping area.*

*Furthermore it is admitted on page 67 that “jammed conditions with excessive delays” will occur. This will foster, as you admit, “Total breakdown and stop and go conditions.” p. 68.*

## **Response V-7**

This comment is noted and expresses opinions regarding the proposed policy modification project. The commentor’s example illustrates the intent of the proposed Transportation Impact (LOS) Policy project. Under the current LOS Policy, if a future development project in the area of the Stevens Creek Boulevard/South Winchester Boulevard intersection would result in significant traffic LOS impacts to that intersection, the project would be required to provide additional vehicular capacity (i.e., by widening the intersection). Widening this intersection would further divide this neighborhood and reduce the ability for pedestrians to cross safely.

As described on page 27 of Section *I.C. Description of the Proposed Project* of the EIR, under the proposed Transportation Impact (LOS) Policy, a future development project that would result in significant traffic impacts at this intersection would not be required to provide additional vehicular capacity. Rather, a future project would be required to provide other system-wide roadway improvements or other non-auto improvements, such as adding bicycle lanes or improving pedestrian access near the intersection to facilitate the use of other modes of transportation. The exact improvements desired and the best locations for those improvements would be determined based on consultation with the neighborhood and businesses near each intersection, as described in Appendix A of the policy (refer to Section *IV. Revisions to the Text of the EIR* of this report). In addition, the City is beginning a community process to create improvement master plans for the Community Improvement Zones (refer to Figure 4 in Section *IV. Revisions to the Text of the EIR* of this report) that will determine the priorities of each area.

The term “Protected” is used to convey that the intersection’s overall scale and geometry would remain fairly constant. This term is also meant to convey that the land uses adjacent to these intersections would be protected from right-of-way taking as a result of future vehicular traffic improvements and mitigation requirements.

Section *II.B. Traffic, Transportation and Circulation* of the Draft EIR acknowledges that the proposed project would worsen traffic congestion in the vicinity of the 13 Protected intersections.

## **Comment V-8**

### **2. Impact on Small Business**

The report does not scope out the impact on the nearby small businesses that rely on street side parking for their customers nor access for emergency vehicles if such congestion exists.

There is no analysis of this likely scenario on adjoining commercial properties to the “protected” intersections.

## **Response V-8**

The potential impacts to land uses at the Protected intersections are addressed in Section II.A. *Land Use* of the Draft EIR (on page 54). As stated on page 54, if adopted, the policy modifications would not change the nature, land use designation, or character of these 13 existing intersections. The project does not propose any specific construction or physical development at any of the 13 intersections. The project would not require any additional street right-of-way at these intersections. Therefore, the project does not propose to remove on-street parking at any of the Protected intersections.

The discussion on page 54 also addresses the potential for increased congestion at the protected intersections to impact nearby uses, including businesses. As described on page 54:

*The proposed creation of “Protected” Intersections would allow additional development in the City to be approved, which would result in incrementally increased vehicular traffic and congestion at these intersections. By allowing congestion to worsen at these intersections, the project would result in increased noise, air quality, traffic overflow, and possible disturbance to the operations of businesses (such as congestion blocking entries, traffic cutting through parking lots, etc.). Impacts associated with noise are addressed in Section II.D. Noise; air quality impacts are discussed in Section II. C. Air Quality. The likelihood that traffic overflow would adversely affect residential neighborhoods or other nearby land uses is discussed in Section II.B. Traffic, Transportation and Circulation.*

*As congestion increases at individual intersections, traffic queues will increase in length. This can result in traffic blocking driveways for businesses or residences near the intersections, or cars cutting through parking lots to avoid intersections. Generally the conditions resulting from significant congestion would be experienced in one direction in the morning peak hour, and the opposite direction in the evening peak hour. While annoying, traffic queues that block commercial and residential driveways are considered to be operational issues for a specific area and are not considered to be significant environmental impacts for the purposes of CEQA (see Section II.B. Transportation of this EIR for a discussion of the project’s impacts on traffic and circulation). Likewise, cutting through commercial driveways can be a nuisance to the businesses, but the practice can be limited by the use of speed bumps, diverters, landscaped barriers and other traffic operation design techniques.*

The Draft EIR also acknowledges that future development projects may have significant impacts, including impacts to public services (such as police and fire/emergency services). As stated on page 90 of the Draft EIR:

*“These 13 intersections will experience increased congestion as a result of the planned infill development in their vicinity. Without the proposed policy change, future development that results in an LOS impact at one or more of these 13 intersections would currently be required to either modify the intersection or downsize the project until no significant LOS impacts occur. Therefore, under the existing policy, either these intersections could have to be further expanded, or some amount of development that is otherwise planned for and allowed under the existing General Plan would not be approved.*

*It cannot be determined what amount of future development would be affected, or at what locations these increments of development might occur. Since future development projects are assumed to primarily be on infill sites within the City’s urban area, it is unlikely that these increments of development (i.e., the additional amount of development that would make the difference between a significant and a less than significant LOS impact at one of the 13 intersections) would by themselves result in significant impacts. The development projects themselves, depending on their location, may have significant impacts related to cultural resources, visual change, geology and soils, loss of mature trees, increased energy consumption, impacts upon utilities or public services, or other impacts found within the urban envelope. The amount of development they could be required to downsize (or reduce) due to LOS impacts at the 13 intersections may or may not be a significant factor in those impacts.”*

In addition, page 38 of the Initial Study in Appendix A of the Draft EIR states: “Increased traffic and congestion at these eleven (now 13) intersections could slightly impact fire and police service to these areas by increasing the travel times required to traverse these intersections during peak hours.”

### **Comment V-9**

#### **3. Lack of Funds**

You anticipate access of mass transit but such will further congest the area especially if it is to be any sort of fixed rail or dedicated roadway. Hopes for more rail lines in the County/City will be seriously compromised should BART become a reality since that extension will require all of the transit dollars available to the area in the immediate and foreseeable future.

This EIR does not explore the consequences of the effects of all transit funds going to BART and that further cuts would likely be made to bus service.

### **Response V-9**

This comment expresses an opinion about transit services and funding. As described on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy” which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City’s transportation system, particularly the adopted General Plan Traffic LOS



Policy. The project does not propose the development of any transit facilities and is not related to the BART extension project planned by the Santa Clara Valley Transportation Authority (VTA).

#### **Comment V-10**

##### **4. Deterioration of Air Quality**

For the Winchester/Stevens Creek intersection, it is stated that, “the project (policy) could indirectly contribute to the generation of regional pollution ie. Organic gases, nitrogen oxides and particulates p.72. There must be greater analysis of air quality since it is anticipated that a major source of pollutants, the airport will be expanding. This policy can not be viewed in isolation. There is no mention of collecting data from local hospitals regarding the rates of lung related illnesses in this area. In fact it is desirable that there be a data base established to track the incidence of such illnesses.

#### **Response V-10**

The air quality analysis prepared for the Draft EIR was prepared in accordance with the requirements of the California Air Resources Board (ARB), the Bay Area Air Quality Management District (BAAQMD), and the City of San José. The BAAQMD *CEQA Guidelines (1999)* provide direction on how to evaluate potential air quality impacts, how to determine whether these impacts are significant, and how to mitigate these impacts. The thresholds of significance used by the City of San José and the BAAQMD account for the fact that development projects may be located near sensitive receptors, including children, the elderly, people with illnesses or others who are especially sensitive to the effects of air pollutants. According to the BAAQMD CEQA Guidelines, hospitals, schools, convalescent facilities, and residential areas are examples of sensitive receptors.<sup>3</sup>

With regard to the portion of the comment which states that project should not be viewed in isolation, it should be noted that the analysis of air quality impacts also accounts for pollutant contributions from the approved airport expansion, as well as future emissions associated with the buildout of the approved General Plan (refer to Section V. *Cumulative Impacts* of the Draft EIR).

As described in Section II.C. *Air Quality*, Section V. *Cumulative Impacts*, and Appendix D of the EIR, the project would not result in significant air quality impacts according to the City’s and BAAQMD’s thresholds of significance.

#### **Comment V-11**

##### **5. Faulty Assumptions**

Faulty assumptions and population growth estimated developed by ABAG and the current General Plan land use designations are referenced in developing this EIR. But it is well known that upon the will of the council land use densities and designations can be greatly increased from that first anticipated. Such is the possibility if the 17 acres of the BAREC site are rezoned from agricultural to accommodate “high density residential commercial development”. These densities no longer are only 4 stories high but, what are now sought are high rises of 8 to 10 or more stories.

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<sup>3</sup> BAAQMD CEQA Guidelines, December, 1999. p. 9.

### **Response V-11**

As required by Section 15125 of the CEQA Guidelines, the EIR evaluates the proposed Transportation Impact (LOS) Policy [TIP] modifications as compared to the physical environmental conditions as they existed at the time the Notice of Preparation was published and the environmental analysis was commenced. The project and cumulative scenarios evaluate the proposed policy change in light of planned and future growth in the region. The future traffic volumes used are consistent with Association of Bay Area Governments (ABAG) projections and the City's General Plan, and are the same as those used in the CMP/VTA model. The ABAG projections are coordinated with VTA, and the volumes are incorporated as part of the CMP/VTA model for travel activity related to ABAG region.

The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José's Transportation Impact Policy. The BAREC project is subject to its own environmental review, and development of that project is not covered by this EIR. (However, the long-term cumulative scenario in the EIR accounts for future pending developments within and near the City of San José, such as the BAREC project.) Approval of the proposed TIP modifications project would not mean approval of the BAREC project in Santa Clara. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

### **Comment V-12**

The rationale for the policy is that without a policy change the city would otherwise have to downsize the projects. I and most San Joseans much prefer that the city follow the latter course.

### **Response V-12**

The opinion presented in this comment is noted. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment V-13**

There must be real estimates of the population densities and traffic impacts if transit corridors are developed to the densities currently allowed in the GP 2030 and the more recent transit initiatives recently passed in Sacramento related to the San José area.

### **Response V-13**

As described in the response to comment V-2 above, the project does not propose any specific construction or physical development at any of the 13 intersections. The opinion presented in this comment is noted. Any future development projects will be required to analyze potential traffic impacts upon local intersections, freeways and ramps, per City of San José and Congestion Management Program (CMP) guidelines.

### **Comment V-14**

#### **6. Inadequate Review of Traffic Impact**

On page 74 the EIR anticipates that the intersection at Winchester and Stevens Creek will drop to LOS “F” as well as 8 other “protected” intersections. This EIR does not address or investigate how such congestion will cause traffic to seek other less congested commute or shopping routes. Such alternate routes will surely be through residential neighborhoods which we are promised will not be affected by this policy change!

Such oversight renders this EIR inadequate.

### **Response V-14**

The TIA prepared for the EIR evaluated the effects of the proposed Transportation Impact Policy on other intersections, particularly those near the designated “Protected” intersections. A discussion of the potential for travelers to seek alternative routes and increase congestion at other intersections is provided on page 75 of the Draft EIR. As stated on page 75:

*“With the proposed policy modification, traffic congestion at other intersection throughout the City would also incrementally increase. However, the project would not cause the LOS to drop below acceptable levels at any of the other intersections during the AM or PM peak hour, unless those intersections become Protected intersections by approval of the City Council, which is too speculative to identify at this point.”*

The TIA calculations for other intersections throughout the City are available for review at the City of San José, Department of Planning, Building and Code Enforcement, located at 801 N. First Street, Room 400, during normal business hours.

All future development proposals would be subject to the City’s land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

## **Comment V-15**

On p.76, it is stated, “the proposed Policy stipulates that any LOS Traffic Improvement mitigation measures at other, unprotected intersections which would result in substantial degradation or reduction in capacity for alternative transportation modes will be considered unacceptable. Therefore the proposed Transportation Impact Policy would protect these and similar facilities throughout the City from impacts in the future”

So stated this policy not only “protects” the 13 intersections listed in this document but every other intersection in the city”. Since all are candidates for alternate routes for commuters and shoppers all intersections in the city will be “protected” while the neighborhoods will suffer the degradation of their quality of life .

Such oversight again renders this EIR inadequate, the expanded impact must be investigated.

## **Response V-15**

The sentence from page 76 of the Draft EIR quoted above refers to the discussion on page 26 of the Draft EIR. As stated on page 26:

*“For other, unprotected intersections, unacceptable mitigation measures would include any LOS Traffic Improvement that would result in substantial degradation or a reduction in capacity for alternative transportation modes, as described in the previous section. If an LOS Traffic Improvement proposed to mitigate a project impact would have unacceptable impacts, based on the proposed Policy, the project proponent must identify another mitigation measure. If the alternative mitigation measure proposed requires acquisition of right-of-way and/or affects an existing private development near the intersection, sufficient information about the impact of right-of-way acquisition and redesign of the intersection must also be provided so that the City decision makers and the public will know what the full effects of the mitigation measure would be.*

*If a proposed project fails to provide acceptable mitigation for significant traffic impacts (at other intersections not included on this list), in other words, if it does not avoid significant impacts to both (emphasis added) roadways and other modes of transportation – it cannot be found under this Policy to conform to General Plan transportation policies, or to have less than significant impacts on the physical environment.”*

If a future development project would result in significant traffic impacts at other, non-Protected City of San José intersections, that project would be required to mitigate those traffic LOS impacts (as is the case currently). However, traffic mitigation which would result in substantial degradation or reduction in capacity for alternative transportation modes, would be considered unacceptable by the City, and the developer would need to identify alternative measures. It is not the intent that the scale and geometry of all Citywide intersections be protected from widening; rather, the City would not allow traffic mitigation for future development projects to substantially impact other modes of transportation at intersections throughout the City.

## **Comment V-16**

### **7. Reality Ignored**

The EIR devotes many paragraphs detailing the various bus routes and even their schedules. The analysis fails to even acknowledge that these schedules frequently change and that at every meeting of the VTA there is a steady drum of objection to cuts in the bus service throughout the city and great alarm that the financial problems at the VTA will further curtail bus service. At a recent meeting, the VTA Director stated that bus ridership had increased. What he failed to mention was that many bus routes had been eliminated or had schedules reduced and that much of the light rail ridership had increased during the weekends as San José residents boarded the light rail to shop at the Great Mall in Milpitas.

## **Response V-16**

As stated on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy” which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City’s transportation system, particularly the adopted General Plan Traffic LOS Policy. The proposed Transportation Impact Policy change does not include any construction or physical development.

The text of the EIR has been revised to clarify that bus and light rail transit services, routes, and schedules are subject to change by the VTA. Refer to Section IV. *Revisions to the Text of the EIR* of this document.

## **Comment V-17**

### **8. Benefit to Developers**

The city claims that the revision of the LOS “D” policy is needed to facilitate the construction of housing and expanding retail opportunities (sales taxes). On the one hand it will make it less expensive for the developer to build and the city helps itself as well by creating more opportunity to collect sales taxes. The development in North San Jose will be a great boon to the increment funds diverted to the RDA in this project area known as Rincon de Los Esteros. When will property taxes finally come to the City’s General Fund thus providing the funds sorely needed for street repair, library books park maintenance and etc. that will benefit the entire city.

As for the developer, they will get an enormous financial break in the infill construction of structures. In many paragraphs of the EIR notice is made of the existing amenities such as curbs, gutters, roadways and the availability of utilities thereby reducing by many millions of dollars their cost in developing and redeveloping land. Such savings more than compensate the developer so there is no real need to have such large developments to “meet the bottom line”. These latecomers to San Jose directly benefit from the prior large investments made to an area by the community.

### **Response V-17**

This comment is noted and expresses opinions about the proposed policy modifications. (Note: the North San José Policy Update project is a separate project and is not the subject of this EIR.) The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

### **Comment V-18**

#### 9. Conclusion

THE EIR IS INADEQUATE AND THE SUGGESTED POLICY SHOULD BE ABANDONED SINCE THERE IS NO DOUBT THAT THE ENTIRE CITY WILL BE IMPACTED, INCLUDING THE NEIGHBORHOODS AND SMALL BUSINESSES, BOTH OF WHOM IT HAS BEEN STATED ARE TO BE PROTECTED.

### **Response V-18**

This comment is noted and expresses opinions about the proposed policy modifications. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**W. RESPONSES TO COMMENTS FROM MIKE SCHADECK, DATED FEBRUARY 10, 2005**

**Comment W-1**

I would like to state my opposition to the proposed change to GP-75. I live in the Berryessa area which has four of the thirteen intersections that will be affected by this proposed change. We already are close to traffic gridlock during much of the day at the proposed intersections, and this would make the traffic situation unbearable. There are also quite a few large vacant parcels along Capitol Avenue which will add to the confusion when the parcels are built on. Knowing the city planners policy of adding high density housing next to the light rail, these will add to the already existing traffic mess. Please encourage the City Council members to not change the GP-75 policy and also encourage them to not add more high density housing to an area which already has more than its share of high density units.

**Response W-1**

This comment is noted and expresses opinions about the proposed policy modification project. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**X. RESPONSES TO COMMENTS RECEIVED FROM KIRK VARTAN, DATED  
DECEMBER 6, 2004**

**Comment X-1**

I am a resident of San Jose living at 598 North Henry Avenue, right around the corner of the Stevens Creek/Winchester Avenue intersection. I have been living in the area for almost seven years now and have seen Town and Country get replaced by Santana Row. I have also seen Valley Fair almost quadruple in size. The intersection at Stevens Creek and Winchester Avenue is absolutely horrible already. Often times during the day, I have had to wait two traffic signals to proceed. To even consider impacting that intersection any further should be immediately dismissed.

I attended last weeks [sic] meeting in Council Chambers at 6:30 pm at City Hall, and I voiced my opinions as did many other people. I did not see \*anyone\* take any notes about concerns that were brought up. Why have these meetings if no one is going to document the information and act on it. I pay a lot of money in taxes and I expect my city government to be attentive to citizen needs and to take our voices seriously.

I work at Cisco Systems, Inc. in San Jose and have managed many global and multi-departmental projects. I have offered (and will offer again) my time and effort to help in any way. I would also ask that you do whatever you can to help save a San Jose and bay area resource....the BAREC property. Do not just sit back and let Santa Clara destroy it. Please have your people help with the research. Our team cannot find the historical records dating back to the 1800s.

Request: If you can help locate any information, recorded, deeds, title transfers, etc, it would be extremely helpful to this effort. You might even find the land is still a San Jose property...just a thought.

**Response X-1**

This comment is noted. The City Council will evaluate this information, prior to deciding whether to approve the proposed policy modification. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

Notes were taken during and after the public meeting on December 2, 2004 by the City's Environmental Consultant.

The BAREC property is located within the City of Santa Clara. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

**Comment X-2**

As for the EIR, here are my comments that I would appreciate your feedback on:

Page 29: "The goals and policies together seek to provide a safe, efficient, and environmentally sensitive multimodal transportation system for the movement of people and goods."

Comments: The area is already over trafficked and almost impossible for a pedestrian to navigate. Stevens Creek has almost flattened me as I was crossing due to its width and the speed at which cars



travel. Santa Clara is proposing add hundreds of new housing units to an already congested area. This will make things worse not better.

### **Response X-2**

This comment expresses an opinion regarding existing and future traffic conditions. The commentor's example illustrates the intent of the proposed Transportation Impact (LOS) Policy [TIP] project. Under the current LOS Policy, if a future development project in the area of the Stevens Creek Boulevard/South Winchester Boulevard intersection would result in significant traffic LOS impacts to that intersection, the project would be required to provide additional vehicular capacity (i.e., by widening the intersection). Widening this intersection would further reduce the ability for pedestrians to cross safely and could increase vehicle travel speeds.

Under the proposed TIP policy, a future development project that would result in significant traffic impacts at this intersection would not be required to provide additional vehicular capacity. Rather, a future project would be required to provide other system-wide roadway improvements or other non-auto improvements, such as adding bicycle lanes or improving pedestrian access near the intersection to facilitate the use of other modes of transportation. The exact improvements desired and the best locations for those improvements would be determined based on consultation with the neighborhood and businesses near each intersection, as described in Appendix A of the policy (refer to Section IV. *Revisions to the Text of the EIR* of this report). In addition, the City is beginning a community process to create improvement master plans for the Community Improvement Zones (refer to Figure 4 in Section IV. *Revisions to the Text of the EIR* of this report) that will determine the priorities of each area.

Section II.B. *Traffic, Transportation and Circulation* of the Draft EIR acknowledges that the proposed project would worsen traffic congestion in the vicinity of these Protected intersections.

### **Comment X-3**

Page 54: "The proposed creation of "Protected" intersections would allow additional development in the City to be approved which would result in increased vehicular traffic and congestion within these intersections."

Comments: By protecting a [sic] intersection, you are basically killing it. The only thing you are protecting is the developer that wants to increase capacity in the area. The BAREC development projects would make the LOS at Stevens Creek and Winchester an F or worse.

### **Response X-3**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications.

The term "Protected" is used to convey that the intersection's overall scale and geometry would remain fairly constant. This term is also meant to convey that the land uses adjacent to these intersections would be protected from right-of-way taking as a result of future vehicular traffic improvements and mitigation requirements.

Please refer to the response to comment X-1 above regarding the proposed BAREC development in the City of Santa Clara.

#### **Comment X-4**

Also,

1. “The proposed policy modifications would not significantly impact adjacent land uses.”

Comments: Untrue. What about the huge BAREC development plan. How can you state this? The fact that Valley Fair continues to grow and Santana Row continues to grow shows that the traffic will continue to increase. This is a false statement.

#### **Response X-4**

Section II.A. *Land Use* of the Draft EIR evaluates the potential for the Transportation Impact (LOS) Policy project to physically impact the land uses near each of the intersections, in accordance with the thresholds of significance in the CEQA Guidelines and the City’s requirements. As stated on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated “Transportation Impact Policy” which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City’s transportation system, particularly the adopted General Plan Traffic LOS Policy. The proposed Transportation Impact Policy change does not include any changes to the existing land uses near the 13 intersections, and therefore, would not result in physical land use impacts.

However, by allowing traffic conditions to worsen at the study intersections, the project would indirectly allow for the approval of additional development in the vicinity of these intersections. The traffic and circulation impacts which are likely to result from this proposed policy change are evaluated in Section II.B. *Traffic, Transportation and Circulation* and Appendix C of the EIR.

As mentioned directly above, the proposed project does not include any physical development, and does not include expansion of Valley Fair or Santana Row. All future development proposals would be subject to the City’s land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José’s Transportation Impact Policy. The BAREC project is subject to its own environmental review, and development of that project is not covered by this EIR. (However, the long-term cumulative scenario in the EIR accounts for future pending developments within and near the City of San José, such as the BAREC project.) Approval of the proposed Transportation Impact (LOS) Policy modifications project would not mean approval of the BAREC project in Santa Clara. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

### **Comment X-5**

2. “It would not physically divide an established community or result in the loss of open space or agriculture land.”

Comments: False again. It would basically cut the community apart, separating the north of Stevens Creek from the southern half of Stevens Creek.

### **Response X-5**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the responses to comments S-2 and S-4 above.

### **Comment X-6**

3. The proposed policy “would not directly result in significant impacts to any existing land use.”

Comments: See above. It is already a problem. You are basically throwing the intersection of Stevens Creek and Winchester under the bus so to speak. You are basically executing the intersection, making it unacceptable for both pedestrians and automobiles. If you keep the laws as they are pertaining to this intersection, Santa Clara could not turn BAREC into a enormous housing plan.

### **Response X-6**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the response to comment S-4 above.

The 17-acre BAREC (UC Agriculture/Horticulture Research Center) residential project is within the jurisdiction of the City of Santa Clara, and is not subject to the City of San José’s Transportation Impact Policy. The City of San José will coordinate with the City of Santa Clara and provide input regarding that project. However, the decision whether to approve that project will be made by the City of Santa Clara.

### **Comment X-7**

Page 24: “Examples of unacceptable impacts would include encouraging substantial neighborhood cut through traffic.”

Comments: This is already happening with Santana Row and the problem would be increased with what they are proposing. I have been working at home for the past two years on a pretty regular basis (even more so in the past year), and I see a large number of cars ‘cutting through’ Henry Avenue/North Henry Avenue in order to get around the Winchester traffic backup.

### **Response X-7**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please refer to the responses to comments S-1, S-2, X-2, and X-4 above.

All future development proposals would be subject to the City's land use entitlement processes, public noticing and review, and their own environmental review in conformance with CEQA. As future development projects come forward, those projects will be required to evaluate the traffic impacts likely to result from those projects, including the potential for neighborhood cut-through traffic.

### **Comment X-8**

You say that this EIR will "guide and influence future development" and that it will "encourage multi-modal transportation facilities" and that the old LOS Policy will not. This is not a good assumption and is only an excuse to make it easier for developers to build higher densities. The amount of money the developers would pay hardly covers the changes that will be required at the intersections.

Do not allow for these protected intersections to exist [sic]. Specifically, do not allow the Winchester/Stevens Creek intersection to suffer any more than it already does. If exceptions need to be made, let the developers go in front of the City Council and the citizens, in public, and let their case be heard. The council always has the power to make exception on a case by case basis. Do not sacrifice this ability and give the developers the ability to circumvent the existing policies. Do not turn my neighborhood into a commercial zone for traffic.

### **Response X-8**

This comment expresses an opinion regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. No further response is required as this comment does not raise any questions about the adequacy of the EIR.

**Y. RESPONSES TO COMMENTS RECEIVED FROM BRIAN WARD, DATED  
NOVEMBER 19, 2004 AND NOVEMBER 22, 2004**

**Comment Y-1**

I have been trying to reach Mr. Constantin in the Department of Transportation for over a week to discuss the Meridian and West San Carlos Intersection. Years ago when the Mid-Town Development was shown to us the City officials promised that the crosswalk on the West side of Meridian would be put back in after the construction. Since then we have heard of myriad of excuses (including that it's safer to make a person cross Meridian twice and San Carlos once to get to the Northwest corner instead of just having them cross San Carlos once) as to why the crosswalk can't be put back in. Now I understand that the City of San Jose is attempting to designate this intersection as reaching maximum level of service and, therefore, no further improvements including the long promised replacement of the crosswalk would not be allowed.

Please confirm this information as soon as possible.

**Response Y-1**

Department of Transportation staff has exchanged messages with the commentor about this comment. The purpose of the "Protected" designation for the Meridian Avenue/West San Carlos Street intersection is to protect the curb-to-curb width of the intersection, as well as sidewalk widths, with the intent to maintain/create a multi-modal facility that encourages all modes of transportation. However, if there are operational improvements that could be added to an intersection (for vehicular, pedestrian, transit, and bicycle access), the City would still pursue those improvements. For example, a new crosswalk at the Meridian Avenue/West San Carlos Street intersection would not be precluded by the proposed Transportation Impact (LOS) Policy modifications. The crosswalk at this location has been installed.

**Comment Y-2**

Thank you. Can you tell me why the EIR doesn't address the fact that San Jose Unified uses this area as a major bus terminus for their students?

**Response Y-2**

The text of the EIR has been revised to clarify that San Jose Unified uses this area as a major bus terminus for their students. Refer to Section IV. *Revisions to the Text of the EIR* of this document.

**Comment Y-3**

Thank you for your response. Mr. Constantin did send and [sic] email and leave a message but I still had two phone messages left unreturned and given the deadline of December 6th to voice any objections to this plan, you can see that time was of the essence, if the designation would preclude the crosswalk, to mobilize the neighborhood, media, etc. to prevent this from happening. As I am sure you are aware the EIR pretty much avoids discussing this issue, it also fails to mention that the San José Unified uses this area as their major bus terminus, and if the threats of closing down Trace Elementary go through then the usage will probably increase.

### **Response Y-3**

Please refer to the response to comments Y-1 and Y-2 above. As described on page 22 of the Draft EIR, the Project that is the subject of this EIR is adoption by the City Council of an updated "Transportation Impact Policy" which would replace City Council Policies 5-3 and 5-4, and would guide the near-term implementation of the various General Plan policies related to the City's transportation system, particularly the adopted General Plan Traffic LOS Policy. The project does not propose any development which would increase school usage and does not propose any changes to the San José Unified School District facilities or bus service.

### **Comment Y-4**

Regarding the crosswalk, when the Buena Vista Neighborhood was shown the plans for Midtown and asked for support we were told that the crosswalk on the West side would be removed during the construction of the Safeway and then put back. The Safeway opened in 1994, 10 years ago, and since then we have pretty much heard almost every excuse from the City to avoid putting it back. Among the excuses were:

- Intersection is too narrow to support a crosswalk. However, there had been one there since at least 1972 when I moved here and more than likely much longer.
- It's safer to make people traversing the West side to cross Meridian Avenue twice instead of just crossing San Carlos once. Any person in elementary statistics could point out that increasing the number of streets to cross would actually increase the risk, furthermore, if anybody watches the Northbound Meridian traffic turning Eastbound San Carlos they would see that these people fly around the corner a lot more than those coming Eastbound San Carlos turning Southbound Meridian.
- The intersection will be degraded. It's already a 3-way signal, for approximately four months Southbound Meridian was given the full cycle even if no cars were present, as of last week it was still giving a shorter signal even without cars present.
- Was there a crosswalk there? Classified as selective amnesia by medial professionals.

### **Response Y-4**

This comment expresses opinions regarding the operation of the Meridian Avenue/West San Carlos Street intersection and regarding the proposed policy modification project. The City Council will evaluate the opinions expressed in this comment, prior to deciding whether to approve the proposed policy modifications. Please also refer to the response to comment Y-1 above. No further response is required as this comment does not raise any questions about the adequacy of the EIR. The crosswalk at this location has been installed.

### **Comment Y-5**

Given that there is now going to be a Quizno's and possibly a Starbucks now on the West side it is inexcusable for the crosswalk not to be put back in. Undoubtedly, there will be more pedestrian traffic running across the West side as there is now. According to the EIR regarding protecting the intersections, there are at least four traffic policies that say the City should promote pedestrian usage and yet our neighborhood association gets the blank stare and the standard "I will check into it." Ten (10) years of checking into it should be more than long enough. Of course, there are also the promise

by the City which should be honored, instead of waiting for the first fatality of a school kid and lamenting how much of a tragedy it is before any action is taken.

**Response Y-5**

Please refer to the response to comment Y-4 above.

#### IV. REVISIONS TO THE TEXT OF THE DRAFT EIR

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The following section contains revisions to the text of the Draft Environmental Impact Report, Modifications to the City of San José's Transportation Impact Policy, dated September 2004. Revised or new language is underlined. All deletions are shown ~~with a line through the text~~.

Page xvi      Summary

**ADD** the following after the last paragraph:

A summary of the public outreach effort conducted for this proposed policy modification project is provided below:

The Department of Transportation conducted 8 community meetings as part of the outreach for the new LOS policy and EIR:

- General Plan Community Meetings (October 5,6)
- LOS Specific Community Meetings (October 25,26,27,28 and December 2nd)
- District 6 meeting (November 30<sup>th</sup>)

In addition there was additional outreach with the following groups: Walk San Jose, Developer Roundtable, Housing Advisory Committee, Planning Commission, VTA, SNI PAC, and the Bicycle and Pedestrian Advisory Committee.

As the policy was developed, public briefings were held with Council Committees and study sessions were held with both the City Council and Planning Commission.

At each of the community meetings there was a PowerPoint presentation by City staff that described the policy modification and included time for questions and feedback. Depending on the attendance at the specific meeting (and the time required for questions and discussion) staff would spend up to three hours meeting with community members discussing the new policy. Attached is a summary of concerns that includes the highlights of the feedback received. All other meetings with community organizations and City representatives were restricted by the time allotted for the Agenda. City Staff prepared and made a PowerPoint presentation for each meeting that allowed feedback and questions.

For each of the four original community meetings, City staff sent 600 mailers and advertised in the newspaper for four days. For all other meetings, including the Council Study Session, City staff sent meeting information to everyone who had expressed interest in the policy change. For all meetings with organizations/groups, the outreach for the item was done by each group as part of their agenda process.



## **Community and Business Organizations/Groups**

<u>2003,04</u>	<u>VTa (2 meetings)</u>
<u>10/04, 12/04, 1/05</u>	<u>SNI PAC (3 meetings)</u>
<u>2004</u>	<u>Walk San José</u>
<u>11/04, 1/05</u>	<u>Berryessa Community Action Council (2 Meetings)</u>
<u>1/05</u>	<u>Chamber of Commerce</u>
<u>12/04</u>	<u>Downtown Association</u>
<u>1/05</u>	<u>Silicon Valley Leadership Group</u>
<u>1/05</u>	<u>Home Builders Association</u>
<u>1/05</u>	<u>Tri-County Apartment Association</u>
<u>1/05</u>	<u>Housing Action Coalition</u>
<u>1/05</u>	<u>Consulting Engineers and Land Surveyors of California</u>

## **City Council, Boards and Commissions**

<u>2003</u>	<u>Building Better Transportation (BBT) Committee (5 meetings)</u>
<u>2004</u>	<u>Driving and Strong Economy (DSE) Committee</u>
<u>09/04</u>	<u>Planning Commission Study Session</u>
<u>03/05</u>	<u>Council Study Session</u>
<u>11/04</u>	<u>Bicycle and Pedestrian Advisory Committee</u>
<u>2004/05</u>	<u>Developer Roundtable (3 meetings)</u>
<u>2003, 2004</u>	<u>Housing Advisory Commission (2 meetings)</u>

## **CITY-WIDE COMMENTS**

Below is a summary list of concerns, issues, questions, and comments that were generated during the community outreach for the LOS Policy modifications.

### **Land Use and Growth**

- Why is growth necessary? San Jose is fine as it is.
- When does growth stop?
- Are we proposing tenements?
- It is not acceptable to allow density and go to E and F. Scale back developments instead of allowing E and F.
- Will the special planning areas be subject to condemnation by the RDA?
- Provide locations of similar development
- What is a special planning area?

### **Policy Questions**

- Maintain LOS D and make projects override on a case-by-case basis. No “protected” intersections to allow Council an easy way out.
- Use LOS E as criteria instead of LOS F.
- What cities are we modeling our policy under?
- Continue to have projects mitigate even if it requires widening out intersections.
- What constitutes a transit corridor? What do they refer to?
- Will the policy put more traffic in the neighborhoods?
- Is the policy change developer driven?
- Will we add intersections to the list?

- How where the intersections selected?
- Provide examples of where mixed use has not worked.

### **Implementation Questions**

- How can you guarantee improvements will happen?
- What is the definition of an adjacent community with regards to where the offsetting improvements will be implemented?
- How will this affect fire and police response time?
- What about bus service and enhancing it?
- How will funds be allocated?

### **BERRYESSA COMMENTS**

#### **Land Use and Growth**

- The pictures shown in the presentation are not reality. The Capitol Corridor has bad development- Baton Rouge Development as an example.
- There is no retail or restaurants in Berryessa. Everyone shops in Milpitas.
- Sidewalks are too small on Capitol.
- The Berryessa area is a Suburban Area and should not be subject to the new policy.
- How will this change affect Alexian Hospital access?
- There will be impacts to the school districts by new development.

#### **Policy Questions**

- Is the purpose of the policy to force people to use transit?
- Do not “protect” all 4 intersections on the capitol corridor. It creates a wall of congestion.
- How closely have we worked with the Planning Commission?
- There are no places to walk in Berryessa

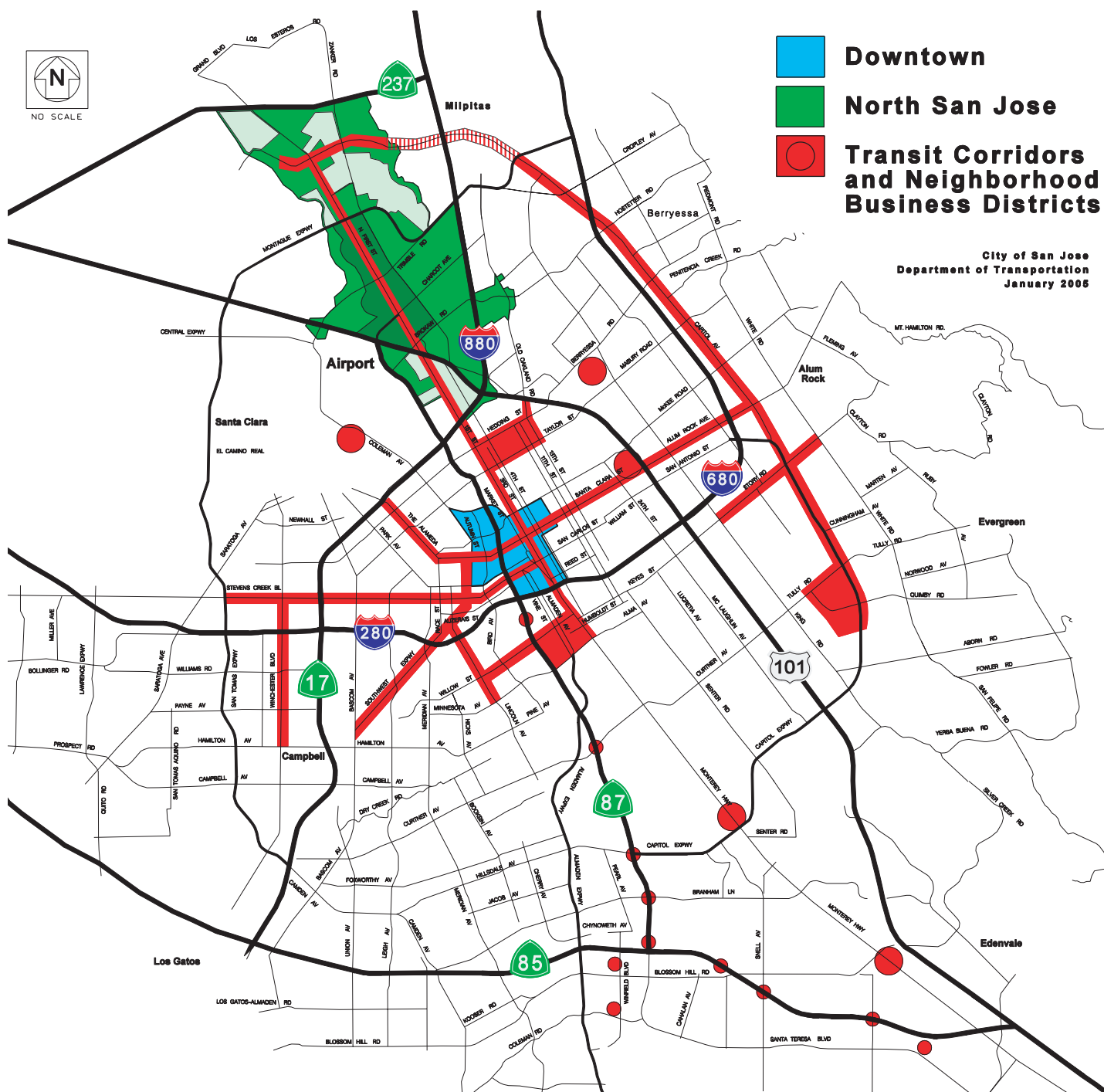
#### **Implementation Questions**

- We don’t trust city government to enforce the policy requirements. It will not be implemented properly.
- Gridlock on Capitol- the signals already function badly because of light rail.



-  **Downtown**
-  **North San Jose**
-  **Transit Corridors and Neighborhood Business Districts**

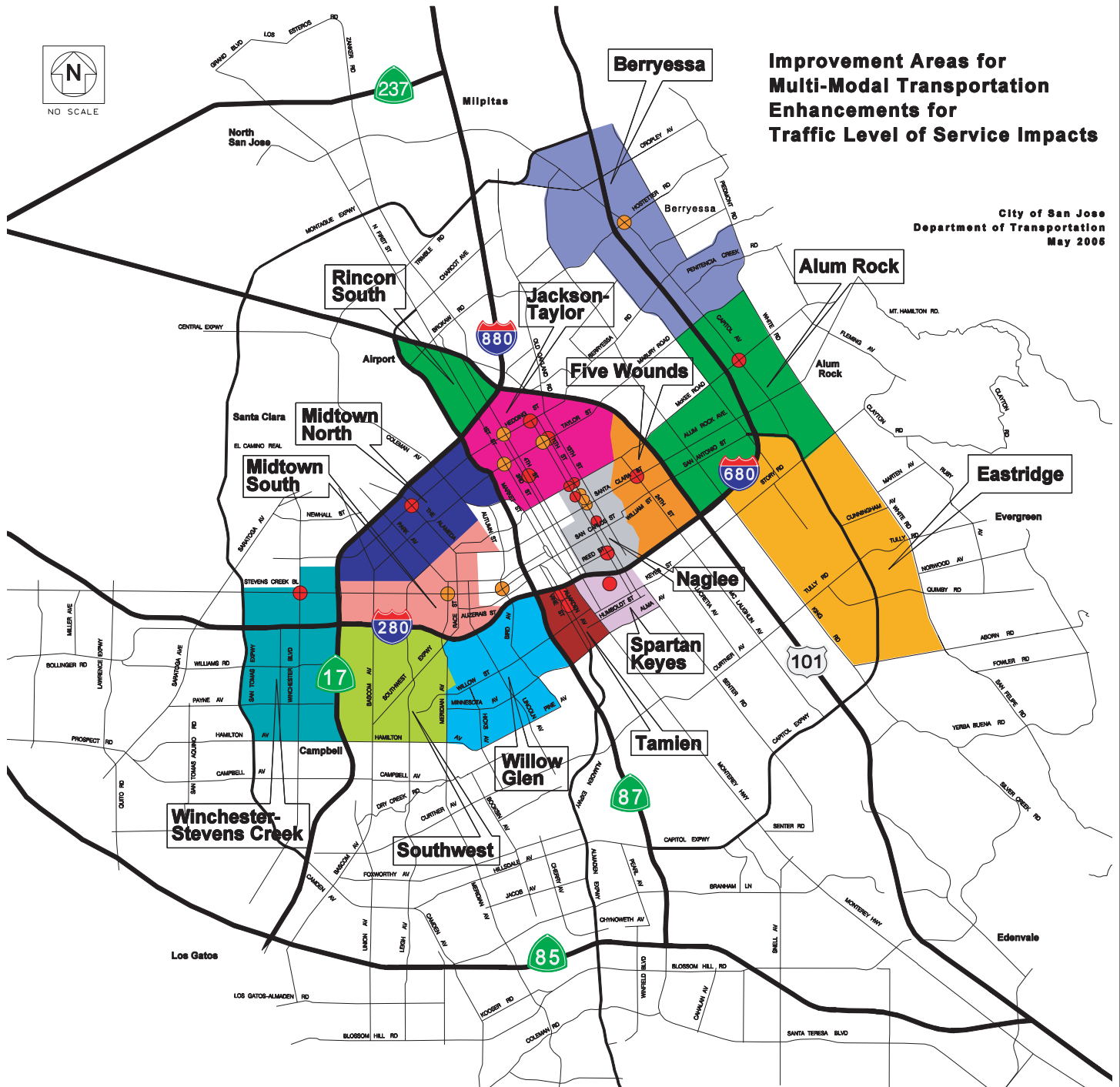
City of San Jose  
Department of Transportation  
January 2005





**Improvement Areas for  
Multi-Modal Transportation  
Enhancements for  
Traffic Level of Service Impacts**

City of San Jose  
Department of Transportation  
May 2006



**REVISE** the second numbered item in the middle of the page as follows:

~~Improvements~~Non-vehicular improvements constructed directly by the developer would need to qualify under one of the following criteria:

1. Physical improvements to the overall citywide transportation system, including transit facilities, pedestrian facilities, bicycle facilities (including but not limited to trails, pathways and bike lanes).
2. ~~Improvements~~Multi-modal improvements (including transit facilities, pedestrian facilities, bicycle facilities) which serve the neighborhood of the development project, or the proximate community impacted by the project traffic.
3. The nature of the improvements must be capacity enhancing on the multi-modal transportation system.

**REVISE** the first sentence in the first paragraph under Santa Clara County Congestion Management Program as follows:

The Santa Clara Valley Transportation Authority (SCVTA) oversees the Santa Clara County *Congestion Management Program* (CMP), last updated in ~~May 1998~~ 2003.

**REVISE** the first sentence in the first paragraph under Metropolitan Transportation Commission Regional Transportation Plan as follows:

The Metropolitan Transportation Commission oversees the Regional Transportation Plan for the San Francisco Bay Area, which was adopted on October 28, 1998 and last amended ~~May 26, 1999~~ in 2001.

**ADD** the following discussion under *Major Strategies*:

*Economic Development Strategy*

The City of San José's Economic Development Strategy strives to make San José a more "balanced community" by encouraging more commercial and industrial development to balance the existing residential development. San José currently has a surplus of housing in relation to employment opportunities, which is referred to as a "jobs/housing imbalance." This imbalance makes it difficult to provide adequate urban services because residential development does not generate sufficient revenue to cover service demands. Economic development, as well as the retention of industrial uses and job potential are, therefore, basic priorities for San José.

**Consistency:** The proposed project consists of modifications to the City's Transportation Impact Policy. By reducing the vehicular traffic flow mitigation requirements at the 13 designated intersections, the project would encourage infill development. The buildout of infill development in these areas, in conformance with the General Plan designations would be consistent with the City's Economic Development Strategy.

Page 60            Section II.B. Traffic, Transportation and Circulation

**ADD** the following sentence to the end of the last paragraph, under Existing Transit Service:

The Santa Clara Valley Transportation Authority (VTA) has jurisdiction over public transit in Santa Clara County. The County is served by public transportation, including bus service, LRT and CalTrain. A brief summary of these services is provided below; however, it should be noted that these services, routes and schedules are subject to change at the discretion of the VTA and CalTrain.

Page 73            Section II.B. Traffic, Transportation and Circulation

**ADD** the following to the first paragraph:

In order to calculate the number of trips that could be generated from the proposed Traffic Impact Policy revision, the "project conditions" are the anticipated conditions if the proposed policy modifications are implemented. The future traffic volumes under "project conditions" were determined based on the growth rates projected by the ABAG as well as those in the *Congestion Management Program/Valley Transportation Agency* model (refer to discussion in Section I. F. *Consistency with Adopted Plans and Policies* of this EIR). The percent growth in traffic trips for each of the 13 intersections was determined based upon land use designations in the San José 2020 General Plan and likely travel patterns associated with those land uses. The future traffic volumes used are consistent with Association of Bay Area Governments (ABAG) projections and the City's General Plan and used in the CMP/VTA model. The ABAG projections are coordinated with VTA and the volumes are incorporated as part of the CMP/VTA model for travel activity related to ABAG region. The Association of Monterey Bay Area Governments (AMBAG) data is also used in the VTA model to determine the traffic volumes from the Monterey Bay Area.

The calculation sheets showing the volume of trips at these intersections under existing, background and project conditions are provided in Appendix C of this EIR. This percent growth in traffic volumes was used to determine the increased number of traffic trips which could occur at each intersection, and the resulting levels of service.

**ADD** the following after the first paragraph:

Future development projects which would result in traffic impacts to intersections under the County's jurisdiction, would still be required to mitigate those impacts, in accordance with the County and CMA requirements.

**ADD** the following above the bold conclusion paragraph at the bottom of the page:

The area near the Meridian Avenue/West San Carlos Street intersection is heavily used by San José Unified School District buses. The project does not propose any development which would increase school usage and does not propose any changes to the San José Unified School District facilities or bus service. However, increased congestion at this intersection would result in impacts similar to those described above for other transit routes.

**REVISE** the Proposed Transportation Impact Policy as follows:

TITLE	PAGE	POLICY NUMBER
	1 OF 6	5-3
TRANSPORTATION IMPACT POLICY	EFFECTIVE DATE	REVISED DATE

## **BACKGROUND**

The San José City Council adopted the following City Policy on \_\_\_\_\_. This policy repeals and replaces previously adopted Council Policies 5-3, “Transportation Level of Service” and 5-4, “Alternate Traffic Mitigation Measures”.

## **PURPOSE**

The purpose of this Policy is to guide analyses and determinations regarding the overall conformance of a proposed development with the City’s various General Plan multi-modal transportation policies, which together seek to provide a safe, efficient, and environmentally sensitive transportation system for the movement of people and goods.

## **POLICY**

### **I. TRANSPORTATION POLICIES AND PROGRAMS**

#### **A. General Plan and Adopted Council Policies**

Specific multi-modal transportation policies that are included in the City’s adopted General Plan, or have otherwise been formally adopted by the City Council include the following:

**Pedestrians** General Plan policies encourage pedestrian travel between high density residential and commercial areas throughout the City. Pedestrian access is particularly encouraged for access to facilities such as schools, parks and transit stations, and in neighborhood business districts. [*General Plan Transportation Policy 16*]

**Bicycles** General Plan policies encourage a safe, direct and well-maintained bicycle network that links residences with employment centers, schools, parks, and transit facilities. Bicycle lanes are considered appropriate on arterials and major collectors. Bicycle safety is to be considered in any improvements to the roadway system undertaken for traffic operations purposes. [*General Plan Transportation Policies 41, 42, and 46*]



**Neighborhood Streets** General Plan policies discourage inter-neighborhood movement of people and goods on neighborhood streets. Streets are to be designed for vehicular, bicycle and pedestrian safety. Neighborhood streets should discourage both through vehicular traffic and unsafe speeds. [*General Plan Transportation Policies 1, 8 and 9*]

**Private Developments** When a Transportation Impact Analysis finds that a proposed development project would create an adverse traffic condition within an existing neighborhood, the City's Department of Transportation, other City staff, and the developer's consultants will work to ensure that the development will include appropriate measures, including traffic calming measures where appropriate, to minimize the adverse impacts to the neighborhood.

New development should create a pedestrian friendly environment that is safe, convenient, pleasant, and accessible to people with disabilities. Connections should be made between the new development and adjoining neighborhoods, transit access points, community facilities, and nearby commercial areas. [*Council Policy 5-6: Traffic Calming* adopted 4/25/00 and revised 6/26/01]

**Transit Facilities** General Plan policies state that all segments of the City's population are to be provided access to transit. Public transit systems should be designed to be attractive, convenient, dependable and safe. [*General Plan Transportation Policy 11*]

**Vehicular Traffic** The General Plan provides that the minimum overall performance of signalized intersections within the City should achieve a minimum level of service. A development that would cause the performance of an intersection to fall below the minimum level of service needs to provide vehicular related improvements aimed at maintaining the minimum level of service. If necessary to reinforce neighborhood preservation objectives and meet other General Plan policies, the Council may adopt a policy to establish alternative mitigation measures. [*General Plan Transportation Policy 5*]

**Regional Freeways** General Plan policies encourage the City's continued participation in interjurisdictional efforts, such as the Santa Clara County Congestion Management Agency, to develop and implement appropriate techniques to improve the regional transportation system. [*General Plan Transportation Policy 20*]

## **B. Implementation Programs**

In support of these policies, the City relies upon a number of implementation policies, ordinances, programs, and development processes to maintain and improve the multi-modal transportation system. Specific techniques for protecting neighborhoods from significant traffic effects, and for ensuring that the burden of serving new development does not fall disproportionately upon existing neighborhoods and businesses, presently include the following:

- (a) requiring that all new developments improve their own public street frontage;
- (b) requiring that all new developments maintain an overall standard of Level of Service D or better at signalized intersections unless the intersections are covered by an Area Development Policy or are otherwise designated by the City Council as exempt from this policy;
- (c) collecting taxes from new development for the purpose of maintaining existing streets and roadways. Existing taxes include the *Building and Structure*

*Construction Tax* (SJMC §4.46), *Residential Construction Tax* (SJMC §4.64), and the *Construction Tax* (SJMC §4.54)

(d) implementing a Council “Traffic Calming Policy” (Council Policy 5-6) that provides City resources to prevent, offset, or minimize adverse effects of vehicular cut-through traffic on residential neighborhoods.

## **II. TRAFFIC LEVEL OF SERVICE**

The following language addresses the specific methods for implementing item (b), the City’s adopted General Plan Level of Service Policy for Traffic, including its applicability and scope and an explanation of relevant concepts. This policy serves as a growth management tool. It establishes a threshold for environmental impact, and requires new developments to mitigate significant impacts. This policy serves the City by helping to protect neighborhoods, manage congestion, and build transportation infrastructure.

### **A. Application Of Policy**

#### **1. Geographic Areas**

This Policy applies to all geographic areas of the City with the following exceptions:

- a. The Downtown Core Area, as defined by the City’s General Plan. The Downtown Core Area is exempt from the City’s Transportation Level of Service Policy.
- b. Any area subject to an Area Development Policy adopted pursuant to the City’s General Plan. Each Area Development Policy includes its own guidelines for implementation of the Level of Service Policy.<sup>4</sup>
- c. Specific intersections within Special Strategy Areas that are not required to meet a minimum LOS D. As described in Section III of this Policy, Special Strategy Areas are identified in the City’s adopted General Plan and include Transit Oriented Development Corridors, Transit Station Areas, Planned Communities, and Neighborhood Business Districts.

#### **2. Types of Developments**

This Policy applies to all developments within the applicable geographic areas, except the following types of infill projects shall be exempted from Section II(B) of this Policy, because the Council finds that these projects, individually and cumulatively, will not cause a significant degradation of transportation level of service and subject projects will further other City goals and policies:

- a. All retail commercial buildings containing (5,000) square feet of gross area or less.
- b. All office buildings containing (10,000) square feet of gross area or less.

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<sup>4</sup>The General Plan states that an “area development policy” may be adopted by the City Council to establish unique traffic level of service standards for a specific geographic area.

- c. All industrial buildings of (30,000) square feet or less.
- d. All single-family detached residential projects of (15) dwelling units or less.
- e. All single-family attached or multi-family residential projects of (25) units or less.

In no case shall any of these above types of infill projects be exempted if they are increments of a larger project or parcel.

## **B. Policy Implementation**

### **1. Level Of Service**

As used in this Policy, Level of Service is a measure of traffic congestion at those signalized intersections that are within the areas subject to this policy. The standards used by the City of San José to measure the Level of Service are described in the following table.

The City's goal is to achieve an overall Level of Service of "D" at signalized intersections. City staff shall determine the appropriate methodology for determining the Level of Service, and shall apply that methodology in a consistent manner.

Level of Service	Description	Delay (seconds)
A	No congestion. All vehicles clear in a single signal cycle.	<5
B	Very light congestion. All vehicles clear in a single signal cycle.	5-15
C	Light congestion, occasional back-ups on some approaches or turn pockets.	15-25
D	Significant congestion on some approaches, but intersection is functional. Vehicles required to wait through more than one cycle during short peaks.	25-40
E	Severe congestion with some long back-ups. Blockage of intersection may occur. Vehicles are required to wait through more than one cycle.	40-60
F	Total breakdown. Stop and go conditions.	≥60

## 2. Transportation Impact Analysis

When the City determines through the application of its technical methodology that a proposed development may result in a substantial increase in traffic congestion, the applicant must prepare a Transportation Impact Analysis (TIA) to evaluate those project impacts. The TIA must comply with relevant professional standards and the methodology promulgated by City staff. In addition to describing the existing vehicular transportation facilities in the project area, the TIA must also identify the existence, status and condition of pedestrian, bicycle and transit systems and facilities that would serve, or will be impacted by, the proposed development.

The developer must complete the proposed TIA prior to or in conjunction with the analysis of environmental impacts prepared to satisfy the requirements of the California Environmental Quality Act (CEQA).

### a. Significant LOS Impacts

A significant LOS impact occurs when the TIA demonstrates that the proposed development would either: (1) cause the level of service at an intersection to fall below LOS D, or (2) contribute the equivalent of 1% or more to existing traffic congestion at an intersection already operating at LOS E or F.

It has long been San José's policy that adding 1% or more to an already congested intersection is a substantial increase in congestion and constitutes a significant impact, and that is still the intention of this Policy.

When a significant impact occurs, then the TIA must also identify improvements that would reduce traffic congestion so that the intersection operates at the level that would exist without the proposed project. These traffic improvements will be referred to as LOS Traffic Improvements.

### b. Mitigation for LOS Impacts

The proposed development is required to include construction of all LOS Traffic Improvements identified in the TIA as necessary to mitigate the significant LOS impacts, unless the TIA demonstrates that these improvements would have an unacceptable impact on other transportation facilities (such as pedestrian, bicycle, and transit systems and facilities), as such impacts are described in the next section of this policy. Implementing mitigation measures that cause unacceptable impacts in order to reduce the impacts of traffic congestion from a new development, is not consistent with the City's General Plan policies. In order to achieve conformance with the City's General Plan Traffic Level of Service and other transportation policies, alternative mitigation measure(s) that do not have unacceptable impacts, and that would reduce traffic congestion so that the intersection operates at the level that would exist without the proposed project, must be identified and implemented.

### **3. Unacceptable Impacts of Mitigation**

For purposes of this Council Policy, an LOS Traffic Improvement has an unacceptable impact if the TIA demonstrates that the improvement would result in a physical reduction in the capacity and/or a substantial deterioration in the quality (aesthetic or otherwise) of any other planned or existing transportation facilities (such as pedestrian, bicycle and transit systems and facilities).

The following are examples of the kinds of impacts that would be considered unacceptable.

- reducing the width of a sidewalk below minimum city standard
- eliminating a bicycle lane or reducing its width below city standard
- eliminating a bus stop or eliminating a parking lane that accommodates a bus stop
- eliminating a parking strip (between sidewalk and street) that contains mature trees
- encouraging substantial neighborhood cut-through traffic
- creating unsafe pedestrian and/or automobile operating conditions.

## **III. SPECIAL STRATEGY AREAS**

### **A. Background**

To continue to expand local intersections in order to increase their vehicular capacity may, under certain circumstances, result in a deterioration of the local environmental conditions near those intersections, and an erosion of the City's ability to both encourage infill in designated Special Strategy Areas, and to support a variety of multi-modal transportation systems.

The City of San José has identified certain local intersections for which no further physical improvement is planned. These specific intersections, because of the presence of substantial transit improvements, adjacent private development, or a combination of both circumstances, cannot be modified to accommodate additional traffic and operate at LOS D or better, in conformance with all relevant General Plan policies. These intersections are all well within the Urban Service Area and the Greenline/Urban Growth Boundary of the City. Future infill development that is otherwise consistent with other General Plan policies encouraging Smart Growth may, therefore, generate additional traffic through these intersections, resulting in a level of congestion that would not otherwise be consistent with the rest of this Policy.

### **B. Application**

Any intersection that is added to the List of Protected Intersections must be within designated Special Planning Areas as shown in Exhibit I attached to this Policy, and consistent with the General Plan. The process of adding to the List of Protected Intersections is described in greater detail in the Implementation Procedures in Appendix A of this Policy.

### **C. Protected Intersections**

This Policy therefore acknowledges that exceptions to the City's policy of maintaining LOS D at local intersections will be made for certain Protected Intersections that have been built to their planned maximum capacity. A list of these intersections will be approved by the City Council, subsequent to completion of the appropriate CEQA review. The list may be modified by the Council in the future. Any decision to modify the list will only be made after appropriate public review and consideration of any adverse impacts that might result from such a decision.

If a proposed development project would cause a significant LOS impact [as defined in Section II(B)(2) above] at one or more of these Protected Intersections, the proposed development will include construction of specific improvements to other segments of the citywide transportation system, in order to improve system capacity and/or enhance non-auto travel modes.

The physical improvements that would be included in the proposed development will be capacity enhancing improvements to the citywide transportation systems. First priority for such improvements will be those improvements identified that would be proximate to the neighborhoods impacted by the development project traffic. The process for identifying and approving these improvements is described in Appendix A of this Policy.

By funding these improvements to the City's overall multi-modal transportation system, the development project will contribute substantially to achieving General Plan goals for improving and expanding the City's multi-modal transportation system. The development project would, therefore, be consistent with the City's General Plan multi-modal Transportation Policies, including the Traffic Level of Service Policy.

### **D. Applicability to Subsequent Projects**

A determination of General Plan conformance for a particular development project would not be applicable to subsequent, different development projects that have LOS impacts on the same Protected Intersection. Any individual project that would result in LOS impacts must be evaluated in the context of its own impacts and its own efforts to conform to this Policy.

**APPENDIX A**  
**TO COUNCIL POLICY 5-3**

**POLICY IMPLEMENTATION PROCEDURES<sup>5</sup>**

The applicant<sup>6</sup> for any proposed development project that might generate a substantial amount of traffic is required to submit a Traffic Impact Analysis (TIA) that identifies (a) project traffic impacts on nearby intersections, and (b) mitigation for any impact identified as significant. The TIA must be prepared by a qualified traffic engineer to the satisfaction of the Director of Public Works and needs to identify not only impacts from project traffic but also possible impacts from any proposed mitigation measures. This must include impacts on roadways and roadway capacity, and on any facilities or systems for alternative forms of transportation (such as transit stops, sidewalks, bicycle lanes, etc.), whether within the public right-of-way or not.

If the TIA concludes that the project would not result in significant traffic Level of Service (LOS) impacts to any intersections or freeway segments, or impacts to any alternative transportation modes, the project can be identified as conforming to the General Plan Traffic LOS Policy. If the project would result in a significant traffic LOS impact, and its proposed LOS mitigation would have unacceptable impacts on other transportation facilities, or if the project itself would result in an unacceptable impact on other transportation facilities, the project would need to be modified in order to avoid both the significant traffic LOS impact and the unacceptable impact(s) on other transportation facilities. The modification could be one or a combination of the following:

- (1) a reduction in the size of the project (less square footage or number of units proposed, etc.) to a degree that would avoid the need for traffic LOS mitigation, or
- (2) the identification of a different mitigation measure that would reduce the traffic LOS impact to an acceptable level and would not itself have unacceptable impacts, or
- (3) modification of the project design to avoid the significant traffic LOS impact and/or the unacceptable impact(s) on other transportation facilities.

Please see the following discussion for a description of what constitutes an unacceptable impact. The directions for preparing a TIA, including the thresholds for triggering its preparation and the criteria used both to determine the significance of traffic impacts and to evaluate the effectiveness of mitigation measures, are described in the detailed methodology prepared and maintained by the City's Department of Transportation, consistent with prevailing professional standards in the field.

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<sup>5</sup> Except as otherwise noted in this Appendix, terms used herein shall have the meanings described within the Policy.

<sup>6</sup> For this Policy, the term "applicant" refers to someone that has requested an entitlement or discretionary approval from the City of San José.

### **Unacceptable Mitigation Measures – Citywide**

Unacceptable mitigation measures include any LOS Traffic Improvement that would result in substantial degradation of or a reduction in capacity for alternative transportation modes. If any of the LOS Traffic Improvements that are necessary to avoid significant traffic impacts could, themselves, have unacceptable impacts on other existing or planned transportation facilities, those improvements will not be allowed. An unacceptable impact on other existing or planned transportation facilities is defined as reducing any physical dimension of a transportation facility below the City’s stated minimum design standard, or causing a substantial deterioration in the quality of any other planned or existing transportation facilities, including pedestrian, bicycle, and transit systems and facilities, as determined by the Director of Transportation. Examples of unacceptable impacts would include:

- reducing the width of a sidewalk below minimum City standard;
- eliminating a bicycle lane or reducing its width below minimum City standard;
- eliminating a bus stop, or eliminating a parking lane that accommodates a bus stop;
- eliminating a park strip (between sidewalk and street) that contains mature trees that shade and protect the sidewalk;<sup>7</sup>
- encouraging substantial neighborhood cut-through traffic;
- creating unsafe pedestrian and/or automobile operating conditions.

If an LOS Traffic Improvement proposed to mitigate a project impact would itself have unacceptable impacts, the applicant must identify another mitigation measure. If any LOS Traffic Improvement/mitigation measure proposed requires acquisition of right-of-way and/or affects an existing private development near the intersection or elsewhere, sufficient information about the all of the impacts of right-of-way acquisition and redesign of the intersection must also be provided so that the City decision makers and the public will know what the full effects of the mitigation measure would be.

If a proposed project fails to provide acceptable mitigation for significant traffic impacts (at other than Protected Intersections), in other words, if the proposed project does not avoid significant impacts to both roadways and other modes of transportation in a manner that is acceptable under the Policy – it cannot be found under this Policy to conform to General Plan transportation policies, or to have less than significant impacts on the physical environment.

### **List of Protected Intersections**

The City Council has approved a List of Protected Intersections that have been built to their planned maximum capacity, as stated in this Policy. It is the City’s intention that no further expansion of those intersections will occur. In creating this list, an environmental impact report (“EIR”) was prepared and that EIR was certified by the City Council, all as required under the provisions of the California Environmental Quality Act of 1970, as amended (“CEQA”), that acknowledged that traffic congestion at those Protected Intersections will eventually exceed the City LOS standard of D.

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<sup>7</sup> A park strip with mature trees provides a substantial physical separation between pedestrians and vehicular traffic, adds a degree of protection to the sidewalk, and creates a more comfortable environment for pedestrians, especially children.



### Additions to List of Protected Intersections

The City Council may decide in the future, based on recommendations from City staff or others, that one or more additional intersections should be added to the List of Protected Intersections. To be eligible for the list, intersections must be at infill locations and within designated Special Planning Areas as shown in Exhibit I attached to the Council Policy, and consistent with the General Plan. Special planning areas may include designations such as the following:

- Transit-Oriented Development Corridors;
- Planned Residential/Community Areas;
- Neighborhood Business Districts;
- Downtown Gateways

Any addition to the List of Protected Intersections must be approved by the City Council. Any revision will undergo the appropriate CEQA review, including an analysis of future conditions that include traffic from planned and reasonably foreseeable development. The current list will be maintained and promulgated by the Director of Transportation. Intersections that are added to the list will be already built to their maximum capacity, where further expansion would cause significant adverse effects upon existing or approved transit or other multimodal facilities, nearby land uses, or local neighborhoods.

Intersections added to the List of Protected Intersections that are also designated on the Santa Clara County Congestion Management Plan must still meet CMP requirements.

### Impacts to Protected Intersections

If a TIA is prepared and identifies a significant LOS impact to a Protected Intersection that is on the Council-approved List of Protected Intersections, the project would not be required in that particular instance to provide further vehicular capacity-enhancing improvements to that intersection in order for the City to find project conformance with the General Plan. Instead, as described below, General Plan conformance could still be found if the applicant chooses to provide improvements to other parts of the citywide transportation system in order to improve transportation-system-wide roadway capacity or to enhance non-auto travel modes in furtherance of the General Plan goals and policies described in this Council Policy. The improvements would be within the project site vicinity or within the area affected by the project's vehicular traffic impacts. With the provision of such other transportation infrastructure improvements, the project would not be required to provide any mitigation for vehicular traffic impacts to the listed intersection in order to conform to the General Plan. The threshold of significance for protected intersections is one-half that of non-protected intersections

### Transportation System Improvements

Improvements made to the Citywide transportation system under the provisions of this Policy may be to either the roadway system or to other elements of the City's overall transportation infrastructure. The specific improvements proposed should generally be identified prior to project approval. Priority will be given to improvements identified in previously adopted plans such as area-wide specific or master plans, Redevelopment Plans, or plans prepared through the Strong Neighborhoods Initiative. Neighborhood outreach will occur prior to and concurrent with the project review and approval process.

In determining the extent, number, and location of the Transportation System Improvements, should an applicant choose this option of addressing unacceptable transportation system impacts created by a proposed project, the process described in this Appendix will be followed in order to assure consistency in the application of this Policy. The total value of improvements proposed to be constructed by a particular project having significant LOS impacts on a Protected Intersection will be determined initially by multiplying \$2,000 by the total number of peak hour project trips generated by the project, after all vehicular traffic credits have been assigned.<sup>8</sup> The peak hour used as the basis for calculating this value will be the one (AM or PM) having the highest number of net trips after assignment of credits. The \$2,000 base amount will automatically increase 3.5 percent per year, to ensure that the amount remains at a consistent level over time.<sup>9</sup> The total amount of this calculated value will create the budget for construction of the Transportation System Improvements for a project. The improvements must be implemented within the area proximate to the Special Planning Area affected, as shown on the Improvement Zone Map maintained by the City's Department of Transportation in order to maximize the benefit of the traffic improvements on the same area impacted by the project traffic.

There are caps on the maximum value of Transportation System Improvements that would be required for impacts from a single project on a single Protected Intersection, and for impacts from a single project on two or more Protected Intersections. The maximum values are as shown:

<u>Project Size</u>	<u>1 Impact</u>	<u>2+ Impacts</u>
<u>Less than 400 Trips</u>	<u>\$2,000 per trip</u>	<u>\$3,000 per trip</u>
<u>Over 400 trips</u>	<u>TBD during</u>	<u>TBD during</u>
	<u>CEQA process</u>	<u>CEQA process</u>

The value, location and specific type of improvements, may be some of the information that could be available to the public during the community outreach process that takes place prior to project approval. However, specific improvements can be determined/finalized during subsequent planning permit stages.

For purposes of clarification, building improvements to the Citywide transportation system is not "mitigation" for significant traffic LOS impacts, as mitigation is defined by CEQA. Such improvements would not reduce or avoid the significance of the impacts to the listed intersections. Rather, the improvements accomplished in this way would be a means of providing substantial additional benefit to the community by improving the overall multi-modal transportation system in the area, which the decision makers would consider in deciding whether or not to approve the proposed project. The fact that such improvements would be built if an applicant chose to proceed with a project having an unacceptable impact at a Protected Intersection under the provisions of this Policy were identified in the EIR that addressed the impacts of designating Protected Intersections, [and the benefits of these anticipated improvements were addressed in the Statement of Overriding Considerations adopted by the City Council in approving the revised Level of Service Policy.] In approving this Policy, the City has determined that building such improvements will contribute

<sup>8</sup> Credits, or reductions in the net number of trips generated by a proposed development project, can be based on factors such as existing development on the project site that will be removed if the proposed project is implemented and/or reductions in trip generation rates assumed consistent with policies of the Congestion Management Agency or assumptions based on studies conducted by the City or the Institute of Transportation Engineers (ITE).

<sup>9</sup> The 3.5 percent cost escalation adjustment is based on a 20-year average construction cost factor. The adjustment will take effect annually on July 1<sup>st</sup>, beginning in 2006.

substantially to achieving General Plan goals for improving and expanding the City's multi-modal transportation system. A development project that conforms to this Policy could, therefore, be found to be consistent with the City's General Plan multi-modal Transportation Policies, including the Traffic LOS Policy.

### **CEQA Process for Subsequent Projects**

A traffic LOS impact to a Protected Intersection will still be considered a significant impact for the purposes of CEQA. A development project that conforms to this Policy which results in significant traffic impacts at one or more of the Protected Intersections will not normally be required to prepare a separate EIR just to address its impacts at one of the listed Protected Intersections. It is anticipated that the project-specific environmental review may be able to use the EIR certified for the purpose of placing the impacted intersection on the Council-adopted list of Protected Intersections as a base and "tier" off it, as allowed by CEQA and the City's Environmental Review Ordinance.<sup>10</sup> The EIR certified for the Protected Intersection(s) will, however, be used only for the purpose of addressing the impacts of traffic at one or more Protected Intersections. The project-specific environmental document, whether an Initial Study or Subsequent/Supplemental EIR, will include analysis of all other impacts, including other traffic impacts, as required by CEQA. If the project also has a significant impact at another (non-protected) intersection, that impact and its mitigation(s) will be addressed as they have been in the past under existing policies. If the impact is fully mitigated in a fashion that is consistent with the General Plan and the adopted Council Transportation Impact Policy, it will not trigger preparation of an EIR.

If an applicant for a project found to have a significant impact on one of the listed Protected Intersections chooses not to construct other transportation system improvements, the other alternative method available for finding that project consistent with the General Plan would be to downsize the proposed project, so that it would not result in a significant impact at the listed intersection. If the applicant chooses not to implement transportation system improvements as allowed for under this Policy, or to downsize the project in order to eliminate the significant LOS impact at the Protected Intersection, then the project could not be found to be consistent with the City's General Plan and could not be approved. The project would also have a significant unavoidable CEQA impact.

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<sup>10</sup> The Environmental Review Ordinance is contained at Title 21 of the San José Municipal Code.

Appendix C of the Draft EIR Traffic Calculations

**ADD** the following calculation sheets to Appendix C of the Draft EIR:

MITIG8 - Project (PM)

Mon May 16, 2005 16:11:18

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CSJ Traffic Database - Template  
 (Template modified Oct. 11, 2000)  
 (Database updated December 5, 2003)

## Level Of Service Computation Report

1985 HCM Operations Method (Future Volume Alternative)

\*\*\*\*\*  
Intersection #3077 BIRD/SAN CARLOS  
\*\*\*\*\*

Cycle (sec): 120 Critical Vol./Cap. (X): 1.007  
 Loss Time (sec): 12 (Y+R = 4 sec) Average Delay (sec/veh): 43.9  
 Optimal Cycle: 240 Level Of Service: E+

Approach: North Bound South Bound East Bound West Bound  
 Movement: L - T - R L - T - R L - T - R L - T - R  
 Control: Protected Protected Protected Protected  
 Rights: Ovl Ovl Ovl Ovl  
 Min. Green: 7 10 10 7 10 10 7 10 10 7 10 10  
 Lanes: 1 0 3 0 1 1 0 3 0 1 1 0 2 0 1 1 0 2 0 1

Volume Module: >> Count Date: 1 Mar 2000 << PM  
 Base Vol: 127 263 66 81 1260 121 63 554 235 230 494 41  
 Growth Adj: 1.50 1.50 1.50 1.50 1.50 1.50 1.50 1.50 1.50 1.50 1.50 1.50  
 Initial Bse: 191 395 99 122 1890 182 94 831 353 345 741 62  
 Added Vol: 0 0 0 0 0 0 0 0 0 0 0 0  
 Project: 0 103 10 5 101 9 1 21 14 47 58 8  
 Initial Fut: 191 497 109 127 1991 191 96 852 367 392 799 70  
 User Adj: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 PHF Adj: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 PHF Volume: 191 497 109 127 1991 191 96 852 367 392 799 70  
 Reduct Vol: 0 0 0 0 0 0 0 0 0 0 0 0  
 Reduced Vol: 191 497 109 127 1991 191 96 852 367 392 799 70  
 PCE Adj: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 MLF Adj: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 Final Vol.: 191 497 109 127 1991 191 96 852 367 392 799 70

Saturation Flow Module:  
 Sat/Lane: 1800 1800 1800 1800 1800 1800 1800 1800 1800 1800 1800 1800  
 Adjustment: 0.97 1.06 0.97 0.97 1.06 0.97 0.97 1.06 0.97 0.97 1.06 0.97  
 Lanes: 1.00 3.00 1.00 1.00 3.00 1.00 1.00 2.00 1.00 1.00 2.00 1.00  
 Final Sat.: 1750 5700 1750 1750 5700 1750 1750 3800 1750 1750 3800 1750

Capacity Analysis Module:  
 Vol/Sat: 0.11 0.09 0.06 0.07 0.35 0.11 0.05 0.22 0.21 0.22 0.21 0.04  
 Crit Moves: \*\*\*\* \*\*\*\* \*\*\*\* \*\*\*\*  
 Green Time: 13.0 29.9 56.6 24.7 41.6 53.2 11.6 26.7 39.7 26.7 41.8 66.5  
 Volume/Cap: 1.01 0.35 0.13 0.35 1.01 0.25 0.56 1.01 0.63 1.01 0.60 0.07  
 Delay/Veh: 93.2 28.3 13.6 31.2 47.0 15.9 42.5 61.0 27.4 72.5 25.1 9.4  
 Delay Adj: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 ProgAdjFctr: 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00  
 AdjDel/Veh: 93.2 28.3 13.6 31.2 47.0 15.9 42.5 61.0 27.4 72.5 25.1 9.4  
 DesignQueue: 12 26 4 7 95 7 6 47 17 21 37 2

MITIG8 - Project (PM)

Mon May 16, 2005 16:15:05

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CSJ Traffic Database - Template  
(Template modified Oct. 11, 2000)  
(Database updated December 5, 2003)

Level Of Service Computation Report

1985 HCM Operations Method (Future Volume Alternative)

\*\*\*\*\*  
Intersection #3118 STEVENS CREEK/WINCHESTER  
\*\*\*\*\*

Cycle (sec): 134 Critical Vol./Cap. (X): 1.071  
Loss Time (sec): 12 (Y+R = 4 sec) Average Delay (sec/veh): 61.8  
Optimal Cycle: 240 Level Of Service: F  
\*\*\*\*\*

Approach:	North Bound			South Bound			East Bound			West Bound						
Movement:	L	T	R	L	T	R	L	T	R	L	T	R				
Control:	Protected			Protected			Protected			Protected						
Rights:	Ovl			Include			Ovl			Ovl						
Min. Green:	7	10	10	7	10	10	7	10	10	7	10	10				
Lanes:	1	0	2	0	1	0	2	0	3	0	1	2	0	3	0	1

Volume Module:	>> Count	Date:	18 Apr 2000	<< PM		
Base Vol:	359	517	400	472 1215 127	220 926 261	550 844 193
Growth Adj:	1.16	1.16	1.16	1.16 1.16 1.16	1.16 1.16 1.16	1.16 1.16 1.16
Initial Bse:	416	600	464	548 1409 147	255 1074 303	638 979 224
Added Vol:	0	0	0	0 0 0	0 0 0	0 0 0
Project:	70	101	19	14 111 9	3 7 65	16 13 12
Initial Fut:	486	701	483	562 1520 156	258 1081 368	654 992 236
User Adj:	1.00	1.00	1.00	1.00 1.00 1.00	1.00 1.00 1.00	1.00 1.00 1.00
PHF Adj:	1.00	1.00	1.00	1.00 1.00 1.00	1.00 1.00 1.00	1.00 1.00 1.00
PHF Volume:	486	701	483	562 1520 156	258 1081 368	654 992 236
Reduct Vol:	0	0	0	0 0 0	0 0 0	0 0 0
Reduced Vol:	486	701	483	562 1520 156	258 1081 368	654 992 236
PCE Adj:	1.00	1.00	1.00	1.00 1.00 1.00	1.00 1.00 1.00	1.00 1.00 1.00
MLF Adj:	1.00	1.00	1.00	1.00 1.00 1.00	1.00 1.00 1.00	1.00 1.00 1.00
Final Vol.:	486	701	483	562 1520 156	258 1081 368	654 992 236

Saturation Flow Module:

Sat/Lane:	1800	1800	1800	1800	1800	1800	1800	1800	1800	1800	1800	1800
Adjustment:	0.97	1.06	0.97	0.97	1.04	1.00	0.88	1.06	0.97	0.88	1.06	0.97
Lanes:	1.00	2.00	1.00	1.00	2.71	0.29	2.00	3.00	1.00	2.00	3.00	1.00
Final Sat.:	1750	3800	1750	1750	5077	522	3150	5700	1750	3150	5700	1750

Capacity Analysis Module:

Vol/Sat:	0.28	0.18	0.28	0.32	0.30	0.30	0.08	0.19	0.21	0.21	0.17	0.13
Crit Moves:	****			****			****			****		
Green Time:	34.8	26.4	52.4	45.9	37.5	37.5	15.9	23.7	58.5	26.0	33.8	79.7
Volume/Cap:	1.07	0.94	0.71	0.94	1.07	1.07	0.69	1.07	0.48	1.07	0.69	0.23
Delay/Veh:	93.6	54.2	28.4	48.7	76.7	76.7	46.7	85.9	20.8	91.8	35.5	9.7
Delay Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
ProgAdjFctr:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	93.6	54.2	28.4	48.7	76.7	76.7	46.7	85.9	20.8	91.8	35.5	9.7
DesignQueue:	29	44	23	30	88	9	17	70	16	41	58	7